

21st December,
2022
(AK)
01-02

WPCRC 187 of 2022
IA No: CAN 1 of 2022
With
W.P.A 5602 of 2022

Amarendra Nath Chandra & Anr.
Vs.
Sri Soumen Khan, Chairman, Midnapur Municipality and
President, Board of Councilors, Midnapur Municipality

Mr. Pingal Bhattacharyya
Ms. Soumita Ghosh
...for the petitioners.

Mr. Sujay Bandyopadhyay
Mr. Shambhu Mahato
Mr. J. Das
...for the alleged contemnor.

Learned counsel for the alleged contemnor hands over a photocopy of a show cause notice issued to the private respondent in the writ petition, namely, Sri Somnath Singha Roy as to why the illegal construction raised by the said noticee shall not be demolished as per the provisions of Section 218 of the West Bengal Municipal Act 1993 and West Bengal Municipal (Building) Rules, 2007.

Learned counsel for the petitioner in the contempt application submits that the said notice is futile since it is not issued in due process of law.

Such a notice issued by the Executive Officer of the Midnapur Municipality, it is contended, does not suffice

to comply with the order of this court passed in the writ petition.

Learned counsel further points out that the resolution taken by the Midnapur Municipality dated September 7, 2022, does not speak about any show cause notice being issued in the context of demolition but rather speaks about regularization of the illegality committed by the noticee.

It transpires from the annexures to the affidavit filed by the alleged contemnor in connection with the contempt application that a resolution was taken on September 7, 2022.

In such resolution, although it was observed that the expert engineers would inspect the foundation structural design, including the specification of steel rod and design of reinforcement made to construct the said building considering the load bearing capacity and strength of the same, no specific notice was issued in respect of demolition of the building.

In the last paragraph of the minutes of such resolution, the Board of Councillors of the Municipality had observed that it was unanimously resolved that the race of law breaking in making construction of building in Midnapur Municipal area should be checked/controlled and before sanctioning the plan and during construction of building thereafter, proper supervision should be taken

care of and to be cautious by the concerned department of Midnapur Municipality.

It was observed that the said resolution was a mere eye-wash to the extent that no specific notice to show cause with regard to penal action was directed to be issued thereby.

On December 16, 2022, when the Rule came up for hearing before this court, it was expressed by the court that the said resolution was unhappy and appropriate steps should be taken with regard to punishing the noticee for making the illegal construction-in-question.

Accordingly, on December 19, 2022, a show cause notice has been issued to the noticee Somnath Singha Roy as to why the illegal construction will not be demolished.

Since there was a mention in the minutes of the resolution of the “race of law breaking in making construction of building”, as well as it was found by the Board of Councillors that there was an irregularity in the construction made by the noticee, the subsequent notice issued on December 19, 2022, is in consonance with the said resolution and not contrary thereto.

The toothless nature of the subsequent action taken on the resolution has now been sought to be rectified by the issuance of the show cause notice dated December 19, 2022.

As such, there is no scope of pursuing the contempt Rule further.

Accordingly, WPCRC 187 of 2022 is discharged and the connected contempt application, being CPAN 744 of 2022, is disposed of.

However, the Midnapur Municipality and its Board of Councillors, including the Chairman, are directed to pursue the show cause notice issued on December 19, 2022, to the hilt and ensure that proper action is taken in due culmination of the said legal process.

The copy of the show cause notice filed in court by learned counsel for the alleged contemnor today be kept on record.

The personal appearance of the alleged contemnor is, thus, dispensed with finally.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)