

D/L
Item No. 8
05.05.2022
KOLE

MAT 1441 of 2019
With
IA No. CAN 2 of 2019 (Old No. 10572 of 2019)

Bijoy Chowdhury & Anr.
-Vs.-
Kailash Shaw & Ors.

Mr. Gopal Ch. Ghosh,
Mr. T. Kr. Bhattacharyya,
Mr. A. Bhattacharyya,

...for the appellants.

Mr. U. Ray,

...for the private respondents.

Mr. Manas Kundu,
Mr. P. Ghatak,

...for the State.

Mr. Rabindra N. Dutta,
Mr. B. Kumar Chatterjee,
Mr. H. K. Halder,

...for the Municipality.

By consent of the parties the appeal and the application are taken up for hearing together.

This is an appeal against the judgment and order dated August 5, 2019, whereby WP No. 25256(W) of 2018 was disposed of by giving certain directions. The writ petitioners had approached the learned Single Judge with the grievance that although the private respondents in the writ petition (appellants before us) were making unauthorized construction, in spite of receipt of complaint from the writ petitioners, Panihati Municipality was not taking any steps. The learned Judge heard the parties and passed the order under challenge, the operative portion whereof reads as follows:-

“Considering the submissions as advanced by the learned advocates for the parties and after perusing the record, I direct the Administrator of the Panihati Municipality to take step under Section 218 of the said Act within six weeks from the date of communication of this order after giving an opportunity of hearing to the petitioners or their authorised representative and the private respondents or their authorised representative and thereafter communicate the decision to the parties within one week.

Needless to mention, at the time of hearing the parties are at liberty to produce all documents pertaining to the issue in question.

Needless to mention, the Administrator is at liberty to take inspection of the premises in question before taking decision.

If it is found in the hearing that the private respondent nos. 7 and 8 have constructed unauthorized construction then the Administrator is directed to take appropriate step for demolition of the unauthorized construction.”

Being aggrieved, the private respondents in the writ petition have come up in appeal before us.

We have heard learned Counsel for the parties. We find no infirmity as such in the order under appeal. The learned Judge had directed the Municipality to go into the matter and ascertain if the grievance of the writ petitioners is legitimate or not. In the event the Municipality finds that indeed the appellants herein are making unauthorized construction or have made unauthorized construction,

appropriate remedial measures be taken by the Municipality. However, everything will be done after giving an opportunity of hearing to the parties concerned. We think that the order is a very reasonable one.

Mr. Dutta, learned Counsel, appearing for the Municipality submits that earlier a hearing had been given by the Administrator of the Municipality since there was no Board of Councillors. After the recent municipal elections, the Board of Councillors has been constituted. Such Board has given a fresh hearing to the parties concerned. However, final decision is yet to be taken.

We clarify that in the event the final decision goes against the present appellants, no steps shall be taken against the appellants by the Municipality for a period of one month from the date of final decision to enable the appellants to prefer statutory appeal, if they are so advised.

The appellants say that a notice of demolition was issued by the Municipality on February 6, 2020. The Municipality says that this is a stale story and no effect will be given to such notice.

With the above clarification, the order under appeal is affirmed.

Till the Municipality takes a final decision in the matter, parties before us shall maintain *status quo* as of date in respect of the concerned construction.

The appeal and the connected stay application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Kausik Chanda, J.)