

Item No. 14

16.09.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 21280 of 2022

Swapan Kumar Sarkar
v.
The State of West Bengal & Ors.

Mr. Indrajeet Dasgupta
Ms. Puspita Bhowmick
Ms. Rima Biswas
Ms. Anima Chakraborty
... for the petitioner.

Mr. Rabindra Narayan Dutta
Mr. Hare Krishna Halder
... for the Municipality.

The matter relates to the holding no. 308, Chittaranjan Road, Block-C, P.S.-Sodepur, P.S.-Ghola, Pin-700 110 under the jurisdiction of the Panihati Municipality.

On receipt of a complaint by the respondent nos. 6,7 & 8 the Panihati Municipality directed the petitioner to appear for a hearing on June 20, 2022.

The petitioner submits that on the said date a representation was submitted before the Municipality but none appeared on behalf of the petitioner.

A further notice was issued on July 27, 2022 directing the petitioner to remain present in the hearing

on August 16, 2022. The petitioner failed to appear in the hearing.

The Municipality passed an order of demolition on September 1, 2022 directing the petitioner to demolish the dilapidated and dangerous structure standing thereon.

The impugned order of demolition dated September 1, 2022 mentions that the petitioner constructed a new building adjacent to the dilapidated building and on inspection it was found that the new construction is illegal measuring an area of 25.56 sq.mtrs. The Municipality directed the petitioner to immediately demolish the aforesaid illegal construction within fifteen days, failing which the Municipality will take proper steps in accordance with law.

The petitioner submits that there is a Civil Suit pending between the parties being TS No. 955 of 2018 before the learned Civil Judge (Senior Division), 3rd Court, Barasat and by an order dated June 18, 2022 the learned Court was pleased to allow the plaintiff i.e. the petitioner herein to repair the existing possessed portion in the undivided Suit building, so that it becomes habitable for the female occupants to reside with decency. The Court, however, recorded no new construction is being allowed.

According to the petitioner, an intimation was forwarded to the Municipality regarding repairing the dilapidated structure.

The petitioner submits that the procedure as set out under the West Bengal Municipal Act, 1993 for issuance of the demolition order has not been complied by the Panihati Municipality. The order of demolition was issued by the Chairman of the Municipality who does not have the jurisdiction to issue the same. There is no resolution of the Board of Councillors of the Municipality.

Prayer has been made for setting aside the impugned order dated September 1, 2022.

Learned advocate representing the Panihati Municipality submits, upon instruction that, the Board of Councillors of Panihati Municipality is yet to take any decision in the matter.

It appears from the submissions made on behalf of the parties that the Chairman independently invoked the jurisdiction and passed the order of demolition.

Learned advocate appearing for the Municipality undertakes that the Municipality will not take any steps for demolition of the construction which is alleged to be unauthorized. The Municipality undertakes to act in accordance with law and to take further steps in the matter.

In view of the above, the impugned order of demolition dated September 1, 2022 is set aside and quashed.

It will be open for the Panihati Municipality to take steps strictly in accordance with the provisions of law.

The writ petition stands disposed of.

Affidavit-of-service filed in Court today is taken on record.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

Sh

(Amrita Sinha, J.)