

13.12.2022
Item No.13
Court No.6.
S. De

**M.A.T. 1525 of 2022
with
I.A. No. CAN/1/2022**

**Mounonil Prasad Mitra.
Vs
The State of West Bengal & Ors.**

Mr. Debajyoti Basu,
Ms. Reshmi Mukherjee,
...for the appellant.

Mr. Rudranil De,
Mr. Monoranjana Mahata,
...for the State.

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

This appeal is directed against a judgment and order dated August 2, 2022 whereby the appellant's writ petition being WPA 16146 of 2021 was disposed of.

The appellant had approached the learned Single Judge with the grievance that the respondent no.8 had made illegal and unauthorized construction. An interim order was passed by the learned Judge on May 18, 2022, the relevant portion whereof reads as follows :-

"The allegation is of unauthorized construction by the respondent no.8. Thus, in this case, as the respondent no.8 is not present

before this Court, the Court deems it fit that the municipality shall make an inspection of the entire plot of lands situated at 339/5 P.L. Ashoke Nagar as also 411/5 P.L. Ashoke Nagar in order to ascertain whether constructions thereon have been made by the parties upon permission from the authority or not. The nature and extent of the construction shall also be reflected in the report. Such report shall be filed on June 23, 2022, when the matter will appear next under the same heading. The inspection shall be held with notice to the parties. Such direction is being passed in order enable the Court to ascertain the exact dispute between the parties and whether the petitioner has approached the Court with clean hands.”

A report, as directed, bearing date June 18, 2021, was filed by the Chairman of the Ashokenagar-Kalyangarh Municipality. The relevant paragraphs of the said report reads as follows :-

“The said Susmita Mukherjee has made are unauthorised and illegal construction of about 854 Sq.ft. without the approval of said Ashokenagar-Kalyangarh Municipality. At present the said land was mutated and recorded in the name of Biswanath Saha, S/O

Nripendra Mohan Saha, in the office of B.L.&L.R.O.

The said Mounanil Prasad Mitra has made one unauthorized and illegal construction of about 18'6 x 9' =178.56 Sq.ft. without the approval of said said Ashokenagar-Kalyangarh Municipality."

When the matter came up before the learned Single Judge for final disposal, the learned Judge passed the order which is the subject matter of challenge in this appeal. The material portion of the order under challenge reads as follows :-

"It appears from the report of the Municipality filed by the Chairman signed on 18th June, 2022 that there exists unauthorized construction at the subject premises.

It will be open for the Municipality to take steps against any unauthorized construction that exists on the said plot of land.

Steps may be taken in the matter strictly in accordance with law, by giving a reasonable opportunity of hearing to the necessary parties at the earliest and the Municipality shall pass a reasoned order and communicate the same to the parties positively within a period of twelve weeks from the date of communication of a copy of this order.

The Municipality shall restrict their action with regard to unauthorized construction only and not enter into or decide any private dispute of the parties regarding right, title and interest in respect of the aforesaid land.”

Being aggrieved, the writ petitioner is before us by way of this appeal.

Mr. Basu, learned advocate appearing for the appellant/writ petitioner has made submission at length trying to impress upon us that the Municipality is colluding with the private respondent. Naturally, we are not inclined to go into such allegations.

It appears that pursuant to the order of the learned Single Judge which is under challenge, the Chairman of the Municipality held a hearing on September 3, 2022 which was attended by both the appellant and the private respondent. Both the parties made their submission before the Chairman. The Chairman has passed an order on September 16, 2022 directing both the appellant and the private respondent to demolish the unauthorized construction made by them.

The appellant has filed an exception to such order. We are, however, of the view that the order of the learned Single Judge which is appealed against, has been worked out culminating in the order dated

September 16, 2022 passed by the Chairman of the said Ashokenagar-Kalyangarh Municipality. If the appellant is aggrieved by the said order, it would furnish him with a fresh cause of action. Needless to say, the appellant would be at liberty to challenge the said order of the Municipality before the appropriate forum in accordance with law.

Since the Municipality has already acted in terms of the order impugned, nothing survives of the challenge to the said order of the learned Single Judge.

M.A.T. 1525 of 2022 is, accordingly, disposed of along with the application being I.A. No. CAN 1 of 2022.

Interim order, if any, stands vacated.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)