

07
01.12.2022
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 26397 of 2022

**Bitan Paul
-versus
Chandernagore Municipal Corporation & Ors.**

**Mr. Kamalesh Bhattacharya,
Mr. Sudip Ghosh Chowdhury.
...For the Petitioner.**

**Mr. Suman Basu.
...For the Chandernagore
Municipal Corporation.**

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

The petitioner is aggrieved by the order passed by the Commissioner of Chandernagore Municipal Corporation on 21st September, 2022 directing demolition of the unauthorized construction and recovery of the charges for demolition from the management of the Pearl Rosary School which is being run from the said premises.

The Commissioner was of the opinion that illegal constructions are there in all floors of G+3 storied building. The building plan was sanctioned for residential purpose but the same is being used for running a private school.

Further illegal constructions have been made in the 4th and 5th floor without obtaining any sanction plan.

The Commissioner was of the opinion that the management of the school is playing with the security of the lives of the students, teachers and the staff running the school with huge number of students where illegal constructions are simultaneously being done at the 4th and the 5th floors.

Learned senior advocate appearing for the petitioner submits that the school, upto the 3rd floor level, is running from the said premises for a considerable period of time. The school is affiliated to the West Bengal Board of Secondary Education.

Prayer has been made for setting aside the order passed by the Commissioner.

An issue has also been raised with regard to the jurisdiction of the Commissioner to pass the order of demolition.

Learned advocate appearing for the Chandernagore Municipal Corporation defends the order of demolition passed by the Commissioner.

It has been submitted that according to the provisions of the West Bengal Municipal Corporation Act, 2006, the Commissioner is the competent authority to pass the order of demolition.

The petitioner is occupying and using the said premises without obtaining the completion certificate.

It has been highlighted that safety and security of the teachers, students and staff of the school is at stake as illegal constructions are being made.

Even though sanction was for construction of residential building, the same is being used as a school where huge number of students, staff and teachers remain present on regular basis.

From the documents annexed to the writ petition and on perusal of the impugned order of demolition, it appears that the said order was passed upon giving opportunity of hearing to the representatives of the school. The names of three of the representatives of the managing committee of the school who were present in the hearing are mentioned in the impugned order.

The school authority was given several show cause notices and orders for stopping the construction work; none were responded by the school.

The Corporation lodged FIR before the police. The Commissioner being apprehensive of mishap or accident passed the order of demolition.

The school is admittedly making construction without the proper sanctioned plan and is occupying and using the building without a completion certificate. Both are impermissible in law.

According to the provisions of law, construction can be made only after obtaining permission/ sanction and not prior thereto. Construction always follows the sanction which is granted and it is not the other way round when construction is made prior to sanction being granted.

Any interference with the order of demolition will send out a very wrong message to the students of the school, the teachers and the public at large that regularization may be sought for of the construction which has been made without obtaining a prior sanction plan.

The Commissioner being the competent authority issued the order of demolition after complying with the principle of natural justice. There is no apparent error in the order impugned requiring interference.

The Court is not inclined to exercise jurisdiction in the matter.

The writ petition fails and is hereby dismissed.

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

(Amrita Sinha, J.)