

20.12.2022
Item No.15.
Court No.6.
AB

**M.A.T. 1957 of 2022
With
IA CAN 1 of 2022**

**Noor Hossain Sk.
Vs
The State of West Bengal & Others**

Mr. Ranjan Kalifor the Appellant.

Mr. Ziaul Islam,
Mr. Abdus Salamfor the State.

Mr. Raghunath Chakraborty,
Mr. Mahaboob Ahmed
.....for the Maheshtala Municipality.

Mr. Satyajit Talukdarfor the KMDA.

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

A Judgment and Order dated November 23, 2022, whereby the appellant's writ petition being WPA No.15900 of 2022 was dismissed, is the subject matter of challenge in this appeal.

The appellant/writ petitioner claims to have been running a shop on plot no.511 under mouza – Chakmir, police station – Maheshtala. In an earlier round of litigation, the appellant approached a learned Single Judge of this Court by filing WPA No.18954 of 2021, contending that his shop room was demolished by Maheshtala Municipality without giving him any prior notice or opportunity of hearing. One fine day,

the Municipality people came and razed to the ground the appellant's shop room by employing bulldozers.

The learned Judge noted that apprehending demolition of the shop room, the writ petitioner had approached the Chairperson, Board of Administrators, Maheshtala Municipality, by a letter dated November 22, 2021. However, such representation did not receive the attention of the Chairperson. The learned Judge disposed of the writ petition by directing the Competent Authority in the Maheshtala Municipality to dispose of the writ petitioner's representation in accordance with law upon hearing the writ petitioner and all other interested parties and to pass a reasoned order. The material portion of the said order reads as follows:

"The said authority shall decide the entire issue independently. A reasoned order shall be passed and communicated to all concerned. The reasons behind such demolition and the procedure followed shall be disclosed in the order. If the allegations are not correct the findings shall reflect the reasons."

Pursuant to the said order, an order dated June 28, 2022, was passed by the Chairman of the Maheshtala Municipality after hearing the present appellant. The said order reads as follows:

"Noor Hossain Sk., the writ petitioner was allowed to establish his ownership over the subject land by way of record. He submitted that his ownership over the subject land at Dag no.511, Khatian no.3155 under Mouza Chakmir is recorded in the Porcha."

But from records as are collected from the BL & LRO T.M. Block, South 24 Parganas it is transpired that the plot no.511 is recorded in Khatian no.1, which is Govt Khatian, vide his Memo no.488/BL & LRO/T.M.Behala/2021 dated 9.12.2021 the relevant Khatian and plot information on plot no.511 & Khatian no.3155 shows that no record is available. The writ petitioner prayed for a copy of the said memo. His prayer is granted.

Therefore till his claim of ownership is authenticated in the record of L & LR Department no action can be taken in this regard”.

Challenging the said order, the present appellant approached the learned Single Judge in the present round of litigation. By the judgment and order impugned in this appeal, the learned Single Judge dismissed the writ application. The material portion of the said judgment and order reads as follows:

“It transpires that the land in question is recorded in the government khatian and the government is the owner of the land.

The petitioner prays for setting aside the order passed by the Chairman of the Maheshtala Municipality refusing his prayer for grant of compensation.

Records have been produced before this Court by way of report filed by the Municipality and the Block Land and Land Officer, Thakurpukur Block wherefrom it appears that the land in question is recorded in favour of the government.

The payment of fees and taxes and having a license to continue business does not give any right to the petitioner to occupy the vested land of the government and run the shop room.

In the event the petitioner is aggrieved by the act of the Municipality in demolishing his shop room and seeks compensation, it will be open for the petitioner to approach the appropriate forum for relief.

The impugned order is not liable to be interfered with.”

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

We have heard learned Counsel for the parties at length. The Chairman of the Municipality has recorded in his order that the appellant herein could not produce any document in support of his claim of ownership of the shop/land in question. The learned Single Judge refused to interfere with the order since the Municipality cannot decide questions of title. However, the order of the learned Single Judge passed in the earlier round of litigation had directed the Competent Authority in Maheshtala Municipality to pass a reasoned order disclosing the reasons for demolishing the structure in question and the procedure that was followed. This part of the order of the learned Single Judge passed in WPA No.18954 of 2021 has not been complied with by the Chairperson of the Municipality. There was no appeal from the said order which, therefore, attained finality. The Chairperson was obliged to act strictly in terms of the order, which he has not done.

Accordingly, we set aside the order of the Chairperson of the Municipality passed on June 28, 2022, since the same is not in conformity with the learned Single Judge's order dated February 24, 2022, passed in WPA No.18954 of 2021 and remand the matter to the Chairperson of the Municipality for passing a fresh reasoned order keeping in mind the

direction of the learned Single Judge in the order dated February 24, 2022. The Chairperson of the Municipality shall pass a reasoned order within four weeks from the date of communication of this order to him. Such order will be communicated to the appellant within one week from the date of the order. However, we make it clear that this order will not be construed as directing the Chairperson of the Municipality to decide any question of title, which, indeed, the Municipality cannot do.

Consequently, the order under appeal is also set aside. It will be open to the appellant to approach the appropriate forum with his claim for compensation, in accordance with law. If any such forum is approached by the appellant with an appropriate application, the same shall be decided in accordance with law without being influenced by any observation in this order.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

M.A.T. No.1957 of 2022 is, accordingly, disposed of along with IA CAN 1 of 2022.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)

