

2.
14-03-2022
debajyoti
(Ct. no.06)

MAT 727 of 2020
with
IA NO:CAN/1/2020

Sk. Matiur Rahaman
Vs.
The State of West Bengal & Ors.

Mr. A. K. Routh,
Mrs. Anindita Auddy (Das)
... For the Appellant.

Mr. Lalit Mohan Mahata, Sr. Govt. Advocate,
Mrs. Jhuma Chakraborty
... For the State.

Mr. Debabrata Saha Roy,
Mr. Arka Kumar Nag,
Mr. Subhankar Das
... For the Bidhannagar
Municipal Corporation.

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

This appeal is directed against an order dated October 16, 2020, whereby WPA 7083 of 2020 was dismissed.

The writ petitioner, who is the appellant before us, had approached the learned Single Judge with the grievance that the private respondents were making construction on his land and that too, unauthorizedly, without having any sanctioned plan.

Learned Single Judge noted that a suit for partition and injunction is pending between the writ petitioner and the private respondents wherein an order of injunction has been passed. The disputes

sought to be raised are completely of private nature. Learned Judge held that the writ court was not the appropriate forum for the writ petitioner to ventilate his grievance.

In the appeal, several orders were passed directing the Corporation to file a report in the form of affidavit after conducting local inspection of the property in question. A couple of such reports were filed earlier which were singularly unhelpful. By an order dated February 23, 2022, the Corporation was once again directed to file a comprehensive report. Such report has been filed today. It will appear from the said report that there is a sanctioned plan in respect of the impugned construction and the impugned construction has been apparently made in accordance with such sanctioned plan.

Mr. Routh, learned advocate, appearing for the writ petitioner/appellant, says that sanction of the said plan was obtained by the private respondents by material misrepresentation and by practising fraud on the Corporation. He says that this is a fit case where the Corporation authorities should be directed to cancel the plan.

Section 286 of the West Bengal Municipal Corporation Act, 2006 empowers the Commissioner of the Corporation to cancel a sanctioned plan in the event it is found that such sanction has been obtained by material misrepresentation.

The appellant will be at liberty to make an application/representation before the Commissioner of the Bidhannagar Municipal Corporation within a fortnight from date ventilating his grievance. If such

an application is made within the time period indicated, the Commissioner shall take a reasoned decision thereon, in accordance with law and the applicable rules and regulations within a period of six weeks from the date of receipt of such application, after giving an opportunity of hearing to all concerned including the appellant and the private respondents. The decision so taken shall be communicated to the concerned parties within a week from the decision.

We clarify that we have not gone into the merits of the case of either party. The Commissioner shall take an informed decision in the matter in the event an application is made by the appellant as indicated above.

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

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance with all the necessary formalities.

(Kausik Chanda, J.) (Arijit Banerjee, J.)