

15.06.2023
Item No.58
Court No.6.
S. De

F.M.A. 873 of 2017

Avijit Sur.
Vs
South Dum Dum Municipality & Ors.

Mr. Sabyasachi Mukherjee,
Mr. Bibek Dey,
Mr. Debarati Choudhury,
Mr. Mukesh Khanna,
Sd. Neaz Ahmed,
...for the appellant.
Mr. Anirban Majumder,
...for the private respondent.
Ms. Mousumu Bhowal,
...for the Municipality.

A judgment and order dated June 16, 2016, whereby the appellant's writ petition being W.P. 16759(W) of 2015 was disposed of, is under challenge in this appeal.

The appellant/writ petitioner and the private respondent in the writ petition as also in the appeal, are brothers. It appears that they received, as a gift, a plot of land measuring about 2 cottahs 7 chittaks, with a building standing thereon, from their mother Maya Rani Sur, in September, 2003.

Subsequently, the property was divided into municipal holdings, 7A, 7B and 7C, Rastraguru Avenue, Kolkata-700028. The appellant/writ

petitioner occupies premises nos.7A and 7B while the private respondent is in occupation of 7C.

The two brothers share a common septic tank. The appellant wanted to have a separate septic tank for himself. Accordingly, he made representations to the South Dum Dum Municipality. Not having received any response, he approached the learned Single Judge by filing the present writ petition.

The learned Judge disposed of the writ petition with the following observations :-

“On my understanding of the document at page 69 of the petition, two holdings may have one septic tank to be maintained and operated by the owners by mutual arrangement.

Furthermore, the Deed of gift very clearly says (Schedule –C Sl. No.7) that the septic tank on the ground floor would be common for all the owners of the building.

More importantly, the total area of the property is 2 cottah and 7 chittacks. In my opinion it is not feasible to have 2 septic tanks there.

In those circumstances, the prayer for a separate septic tank is refused.

However, I direct the South Dum Dum Municipality to make a suitable enquiry into the matter so that separate municipal drainage facilities are provided to 7A and 7B taken together and 7C taken as a separate unit within

six months of communication of this order.”

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

Learned advocate for the appellant relies on a reply dated August 28, 2014 received by the appellant from the Office of the Administrator of the said Municipality in response to an application made under the Right to Information Act, which is at page 75 of the Paper Book. Relying on such document, he says that there cannot be one septic tank for two or more municipal holdings.

Learned advocate for the Municipality says that after the order of the learned Single Judge was passed and in terms of that order, the Municipality conducted due investigation and the Board of Councillors of the Municipality have come to a unanimous decision that construction of a separate septic tank connected with separate municipal drainage facilities for holding nos.7A and 7B together and 7C taken as a separate unit will not be allowed. A copy of such decision dated July 28, 2022 has been produced before us. Let the same be kept with the records.

In view of the aforesaid decision of the Municipality, the only remedy that the appellant has, would be to challenge such decision in accordance

with law before the appropriate forum if he is aggrieved by such decision. That decision furnishes him with a fresh cause of action, if at all.

Learned advocate for the appellant further says that in the writ petition at paragraph 8, the writ petitioner/appellant has clearly alleged that unauthorized construction has been made by the private respondent. However, the learned Single Judge did not address that issue at all.

We see that there is no prayer in the writ petition with regard to any alleged unauthorized construction. In the representation made by the appellant to the Municipality which is at page 80 of the Paper Book, also there is no whisper of any alleged unauthorized construction made by the private respondent. Further, learned advocate for the private respondent draws our attention to an Inspection Report issued by the Office of the Councillors of South Dum Dum Municipality (page 78 of the Paper Book). It appears from that report that after inspecting the toilet that exists at the mezzanine floor, which according to the appellant is an unauthorized construction, the authorities have not considered the same as unauthorized construction.

Learned advocate for the appellant says whether the Inspection Report, although it has been signed

also by the appellant, does not say whether the concerned toilet is authorized or unauthorized.

Be that as it may, if the appellant is of the view that the private respondent has made any unauthorized construction, he will be at liberty to make appropriate representation before the Board of Councillors of the concerned Municipality. If any such representation is made, the same will be disposed of by the Board of Councillors in accordance with law, by a reasoned order, after giving opportunity of hearing to the appellant as also the private respondent within eight weeks from the date of receipt of the representation.

By the order impugned before us, the learned Single Judge has rejected the prayer of the appellant/writ petitioner for a separate septic tank. We are of the view that the Writ Court is not in a position to decide such a question. Such an issue should be left to the Municipality to decide. In the present case, the Municipality has taken a decision subsequent to passing of the impugned order by the learned Single Judge, holding that separate septic tank connected with separate drainage system cannot be allowed to the appellant. We only clarify that if the appellant challenges such order before the competent forum, in accordance with law, such forum shall decide the matter without being influenced by the

rejection of the appellant's prayer for separate septic tank by the learned Single Judge in the order assailed before us. To that extent, we set aside the observation in the order under challenge to the effect that "the prayer for a separate septic tank is refused". We however do not in any manner endorse the prayer of the appellant for separate septic tank.

With the aforesaid observations FMA 873 of 2017 is disposed of.

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.

(Arijit Banerjee, J.)

(Rai Chattopadhyay, J.)