

Item No. 66

20.03.2023
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 586 of 2023
Md. Dulare & Ors.

v.

Bidhannagar Municipal Corporation & Ors.

Mr. Srijib Chakraborty
Mr. D.N. Maiti
Ms. Pallavi Ray
... for the petitioners.

Mr. Sirsanya Bandopadhyay
Mr. Arka Kumar Nag
Mr. Tirthankar Dey
... for BMC.

Mr. Ayan Mitra
Mr. A. Das
... for the respondent no. 7.

The order dated November 4, 2022 passed by the Commissioner, Bidhannagar Municipal Corporation is under challenge in the present writ petition. The said order has been passed allegedly in compliance of the direction passed by this Court on March 7, 2022 in WPA No.15595 of 2021 (Md. Safiuddin Mondal v. The Bidhannagar Municipal Corporation & Ors.).

The aforesaid Md. Safiuddin Mondal has been impleaded as the respondent no. 7 in the present writ petition.

The present petitioners claim to be the purchasers of certain flats at the subject premises. Md. Safiuddin Mondal lodged a complaint before the Bidhannagar Municipal Corporation that illegal and unauthorized construction was being made.

The Court directed the Corporation to cause an inspection upon notice and to circulate the inspection report. A hearing was directed to be given to the parties and a reasoned order to be passed.

The Commissioner of the Corporation acted in accordance with the said direction and inspected the premises in presence of the petitioners as well as the respondents. It was observed that one six and half storied building has been constructed over the subject plot of land but the respondents failed to produce the sanctioned building plan against the said construction. The Commissioner directed demolition of the unauthorized structure.

Learned advocate representing the petitioners submits, upon instruction that, the petitioners were not present at the time of hearing. The developers of the said property were afforded an opportunity of hearing.

Learned advocate representing the Corporation submits that it was the duty of the parties to produce the plan before the authority at the time of hearing.

The petitioners have also failed to produce any document in support of issuance of notice prior to commencement of construction work.

Learned advocate representing the complainant i.e. the respondent no. 7 submits with conviction that the plan relied upon by the petitioners is a fake one and the same will be evident from the deed of conveyance annexed to the writ petition.

Upon hearing the parties and upon perusal of the materials on record it appears from the order passed by

this Court on March 7, 2022 that a plan was produced before the Court allegedly sanctioned by the Bidhannagar Municipal Corporation. In the present writ petition a plan has been annexed which appears to have been approved by the Rajarhat Gopalpur Municipality. The plan was sanctioned sometimes in the year 2012-13 and the completion certificate was issued in the year 2014-15.

From the impugned order it appears that the respondents, for the reasons best known, did not produce the aforesaid plan before the authority at the time of consideration of the complaint filed by the respondent no. 7. In the absence of the said plan the Commissioner arrived at a finding that the construction was made without any sanctioned building plan.

It is for the Corporation to take a call as to whether the plan which was produced before this Court in the earlier writ petition and has been annexed in the present writ petition is valid or not. The genuinity and the veracity of the plan can be decided only by an expert body and not by the Court.

If the construction is demolished, then the petitioners who claim to have purchased the flats in question relying upon the said sanctioned plan, will be highly prejudiced.

For ends of justice, a further opportunity is granted to the parties to produce the plan in question before the Bidhannagar Municipal Corporation.

The Corporation shall take a decision as to whether the plan is a genuine one or not and whether the construction in question has been made in

accordance with the said plan or not. If it transpires that the plan is not genuine or construction has not been made in accordance with the plan sanctioned, then necessary steps shall be taken by the Corporation to deal with the same.

Steps shall be taken in the matter after granting reasonable opportunity of hearing to all the necessary parties including the private respondent no. 7 Md. Safiuddin Mondal.

A reasoned order shall be passed at the earliest but positively within a period of twelve weeks from the date of communication of a copy of this order.

Learned advocate for the petitioners submits that the original sanctioned plan is in the custody of the developer and the petitioners being purchasers of individual flats do not have the original sanctioned plan.

It will be open for the Corporation to summon the original plan from the developer. In the event, the original plan is not produced, the Corporation will decide as to whether the photocopy of the plan relied upon is genuine or not.

The order dated November 4, 2022 is accordingly set aside.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)