

03. 20.01.2023
Ct. No.6
Tanmoy

MAT 78 of 2023

**Sukumar Dey & Ors.
-Versus-
The Serampore Municipality & Ors.**

**With
IA No: CAN/1/2023**

Mr. Supriyo Chattopadhyay, Adv.,
Brojendra Pratap Singh, Adv.,
Mr. Nripendra Pratap Singh, Adv.

...for the appellants.

Mr. Gautam Lahiri, Adv.

...for the respondent nos.1-4.

Mr. Koushik Chatterjee, Adv.,
Mr. Nilanjan Adhikari, Adv.

...for the respondent no.5.

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

A judgment and order dated January 13, 2023, whereby the writ petition of the appellants being WPA 28166 of 2022, was disposed of, is under challenge in the present appeal.

It appears that in an earlier round of litigation, the private respondents herein had approached the writ Court complaining that the present appellants have made unauthorized construction on the concerned plot of land, without obtaining sanctioned plan therefor from the Serampore Municipality. The writ petition was disposed by a learned Single Judge by a judgment and order dated September 27, 2022 with the following directions:

“The writ petition is accordingly disposed of by directing the respondent no. 2 being the Serampore Municipality to consider and dispose of the representation made by the petitioner strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties including the petitioner within a period of three months from the date of communication of a copy of this order. The said respondent shall pass a reasoned order and communicate the same to all the necessary parties including the petitioner immediately thereafter.

In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.

The aforesaid respondent shall restrict the consideration of the representation with regard to unauthorized construction only and not enter into or decide any private dispute of the parties regarding right, title and interest in respect of the aforesaid land.”

It appears that subsequently, the Municipality passed an order dated December 12, 2022, directing the appellants herein to demolish the impugned construction. This order was challenged by the appellants before the learned Single Judge in the present round of litigation.

The appellants contended before the learned Single Judge that firstly, they were not given adequate opportunity of hearing by the Board of Councillors of the Municipality which amounted to breach of the principles of natural justice; secondly, only the Chairman and one or two Councillors of the Municipality held the hearing. This is in breach of the provisions of the West Bengal Municipal Act, 1993.

The learned Judge called for a report from the Municipality. The report was apparently filed on January 13, 2023. Relying on the report and the documents

annexed thereto, the learned Judge came to the conclusion that the Board of Councillors had heard the appellants. There was no merit in either of the two points urged by the appellants before Her Ladyship. The learned Judge, however, observed that the demolition order is an appealable one and it will be open to the writ petitioners to approach the appropriate forum for relief. By way of breathing space, the learned Judge directed that the Municipality shall not take any coercive steps against the writ petitioners till January 20, 2023.

Being aggrieved, the writ petitioners have come up by way of this appeal.

We have heard learned Counsel for the parties.

Learned Advocate for the appellants has drawn our attention to a document which is at page 132 of the stay application which appears to be a Xerox copy of an Attendance Sheet in connection with a meeting held on November 29, 2022, at 4:00 p.m. in the chamber of the Chairman of the Board of Councillors of the Serampore Municipality. The said document was relied upon by the Municipality before the learned Single Judge to contend that not only the entire Board held the hearing, the appellants/writ petitioners were also present at the hearing. Learned Advocate for the appellants draws our attention to certain anomalies in the said documents. We do not wish to go into the allegations of fabrication or

forgery. However, *prima facie* there appear to be some irregularities in the said documents.

To obviate all complications and problems, we are of the view that ends of justice will be served if the Board of Councillors of the Municipality grants an opportunity of fresh hearing to the appellants. Let that be done within a week from date, after giving at least twenty four (24) hours' notice to the appellants. The appellants will be at liberty to place any document or case law as they may be advised, before the Board of Councillors. The Board shall also hear the private respondents. The Board shall pass a reasoned order, in accordance with law. If the Board finds that indeed the appellants have made unauthorized construction, the Board will take appropriate consequential action.

We clarify that we have not gone into the merits of the case at all. The Board of Councillors of the Municipality shall take an informed decision in the matter, in accordance with law and the applicable Rules, if any.

In view of this order, naturally, no coercive action shall be taken against the appellants in respect of the impugned construction till the Board takes a decision in the matter and communicates the same to the appellants, as directed above.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 78 of 2023 and the connected application being IA No: CAN/1/2023 are disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties, upon compliance with all necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)