

SAT 7 OF 2015

Santipur Municipality

Vs.

Smt. Pritikana Mondal

The appeal is of the year 2015.

The appeal appeared in the warning list on 6th March, 2023 with a clear indication that the same shall be transferred to the regular list on 21st March, 2023, since then the matter is appearing in the list. Therefore, the appellant has due notice.

The appeal is arising out of a judgment and decree dated 29th August, 2014 passed by the learned Civil Judge, Senior Division, affirming the judgment and decree dated 31st August, 2012 in a suit filed by the plaintiff for permanent injunction.

In absence of the plaintiff we have carefully read the judgment of both courts and the grounds of appeal. The plaintiff became the owner of the property by purchase and she is in possession of the property by raising construction in accordance with the sanctioned plan. All the construction have been made in the year 1980 and the last construction was made in 1992.

The plaintiff alleged that on the basis of false complaint, Santipur Municipality initiated a proceeding and issued a demolition order dated 18th May, 2007 in

respect of the suit property without any enquiry. The proceeding was initiated on the basis of the alleged complaint by Smt. Renubala Burman, who was a resident on the adjacent Western side of the suit property on the allegation that the plaintiff had raised construction of two rooms measuring 11' 2" x 5' and 12' 10" x 6' 8" without leaving any statutory space from the Western boundary lying of the plaintiff's property.

The Chairman, Santipur Municipality took a decision without proper enquiry and the Board of Councillors without giving any opportunity to the plaintiff arbitrarily accepted the enquiry report and took a decision on 2nd March, 2007 to demolish the aforesaid construction.

The plaintiff specifically pleaded that the said proceeding was initiated *mala fide* and the impugned order was passed in violation of the principles of natural justice. The plaintiff has also referred to an earlier suit being Title Suit No. 15 of 1995 against Smt. Renubala Burman and others where the plaintiff had specifically alleged that Smt. Renubala Burman and others had encroached a considerable portion of land from the Western side of the plaintiff's property. Smt. Renubala Burman's complaint is a counter blast to the aforesaid suit.

The defendant/appellant filed its written statement and contested the specific proceeding. It was alleged that

the suit is barred under the West Bengal Municipal Act and there has been no violation of principles of natural justice.

The trial court relying upon the observation of our Court in *Gotham Construction Company -Vs. Amulya Krishna Ghose and Ors.* reported at AIR 1968 Calcutta 91 and *Bikash Ghosh -Vs.- Board of Councillors* reported at 2012(2) CHN (Calcutta) 72 held that there is no exclusion of jurisdiction of the civil court in deciding the issue raised in as much as the jurisdiction of the civil court is not that of an appellate court.

The jurisdiction of the Board of Councillors was limited and the issue raised in the suit cannot be decided by the Board of Councillors.

The trial court as well as the appellate court have decided jurisdiction in favour of the civil court to which we fully concur having regard to the nature and extent of the power of the Board of Councillors under Section 218 of the West Bengal Municipal Act.

The trial court as well as the appellate court relied upon the complaint of Smt. Renubala Burman dated 16th October, 2006 and the notice dated 29th April, 1992 issued by the defendant/appellant wherefrom it would appear that a plan was sanctioned by the defendant/appellant municipality in favour of the plaintiff for making construction over her property. The plan was sanctioned being No.51-B(92) dated 22.02.1992.

However, the said plan was not readily available with the plaintiff at the time of filing the suit and by that time the complaint was made in 2016. By 1992 she had completed all her construction. The Municipality did not supply the certified copy of the sanctioned plan although asked for. The Municipality did not deny that there were unable to supply the certified copy of the sanctioned plan. The Municipality is in possession of the said document and ultimately the said sanctioned plan was not taken into consideration by the Board of Councillors in deciding the complaint of Smt. Renubala Burman. On such consideration both the trial court and the appellate court decreed the suit in favour of the plaintiff and the first appellate court affirmed the said decree. There was no material before the Municipality to arrive at a finding that the construction of the plaintiff was unauthorised and without any sanctioned plan.

It is one thing to say that the construction was made without a sanctioned plan and it is another thing to say that construction has been made in deviation of the sanctioned plan. The plaintiff having able to establish that she had a sanctioned plan of which she had furnished the particulars, it is for the Municipality to find out whether the construction made was illegal or without any sanctioned plan.

The surveyor could not have arrived at a finding that such construction is illegal without consulting the sanctioned plan.

The findings of both the courts are raised on cogent findings and does not call for any interference in the second appeal. The second appeal stands dismissed at the admission stage.

(Soumen Sen, J.)

(Uday Kumar, J.)