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Ct No 2023
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AGM

**In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

WPA 3957 of 2023

**Asim Sarkar
Vs
State of West Bengal & Ors**

Mr. Kishore Datta, Sr. Adv.
Ms. Sumita Shaw,
Mr. Tarun Kumar Chatterjee,
Mr. Soumen Chatterjee,
... For the Petitioner.

Mr. Achintya Kumar Banerjee,
Mrs. Indumouli Banerjee,
... For the Bishnupur Municipality.

Mr. Nilendu Bhattacharya,
Ms. C. Dutta,
... For the respondent no. 7.

Mr. Rajrshi Basu,
Ms. Rajlakshmi Ghatak, ... For the State.

Mr. Nandalal Singhanian,
Ms. Sumita Sarkar, ... For the Union of India.

The petitioner is aggrieved by the first stop notice dated January 21, 2023 issued by the Junior Conservation Assistant, Archaeological Survey of India, Bishnupur and the subsequent notice dated 7th February, 2023 signed by the Chairman, Bishnupur Municipality.

By the said notice, the Junior Conservation Assistant instructed the petitioner to stop illegal construction within the Regulated Area of centrally protected monument, Jore Bungla Temple, Bishnupur, Bankura which is within 200 meters of the Prohibited Area.

The impugned notice of the municipality date 7th February, 2023 mentions that the same is the third notice under Section 218 of the West Bengal Municipal Act, 1993. By the said notice the petitioner has been directed to dismantle the building within fifteen days from the date of receipt of the notice, failing which the municipality shall dismantle the unauthorized structure and recover the cost of demolition from the petitioner.

The petitioner submits that the structure is being used as a lodge and marriage hall in accordance with the Certificate of Enlistment issued by the Municipality on 13th December, 2022 and the same is in force till 12th December, 2023.

The jurisdiction of the Junior Conservation Assistant, Archaeological Survey of India and the Chairman of the Bishnupur Municipality who issued the impugned notices have been challenged.

It has been submitted that the aforesaid authorities are not empowered under law to pass such order.

It has been contended that the Central Government is the appropriate authority to issue notice under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the Rules framed thereunder.

It has further been contended that according to Section 218 of the West Bengal Municipal Act, 1993, the Board of Councillors of the Municipality and not the Chairman, is the appropriate authority to issue the notice under Section 218 of the Act.

It has been represented that as Certificate of

Enlistment has been issued by the Municipality and the petitioner is carrying on business in accordance with the same, accordingly, the Municipality ought not to take steps for demolition of the structure from where the business is being carried.

Reliance has been placed on the various provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the Rules framed thereunder and the West Bengal Municipal Act, 1993 and the corresponding Rules.

It has been submitted that the demolition work is going on at a very fast pace; not at the instance of the Municipality, but at the instance of certain other persons with vested interest.

The petitioner submits that though the impugned notice of the Municipality is captioned as the third reminder notice, but in fact the same is the first notice received by the petitioner and prior to the impugned notice no other notice was received by him.

Learned advocate representing the Archaeological Survey of India submits that the construction is absolutely illegal and impermissible in view of the provisions of the Act, 1958.

Learned advocate representing Bishnupur Municipality denies that the impugned notice is the first notice served on the petitioner. It has been submitted that earlier notices were issued to the petitioner for dismantling the structure, which is an unauthorized one.

It has also been submitted that Bishnupur

Municipality is a 'D' category Municipality. No plan has been sanctioned for making the construction.

I have heard the submissions made on behalf of the parties.

On a query made by the Court as to whether or not the construction was made in accordance with any plan sanctioned by the Municipality, it has been fairly submitted by the learned senior advocate representing the petitioner that the construction has been made without obtaining any plan sanctioned by the Municipality.

According to the provisions of the Act, 1993 a construction can be made only after obtaining a valid sanction plan. The law specifically lays down that no person shall erect or commence to erect any building except with the previous sanction of the Board of Councillors in accordance with the provisions of the Act and the Rules framed thereunder.

In the present case, admittedly, no plan has yet been sanctioned by the Municipality permitting the petitioner to erect or commence to erect any building.

The petitioner has contended that equity ought to have been followed and the provision of Section 218 is liable to be complied by the Municipality at the time of issuance of notice under that Section.

The Court is of the opinion that if a party has acted contrary to the provision of the statute and has made construction in violation of the statutory provision, then it will be appropriate for the Municipality to take necessary measures on emergent basis to prevent and stop further

unauthorized construction and also to take steps for demolition of the same.

It appears from the impugned notice dated 7th February, 2023, that the same is the third reminder notice given to the petitioner, though the same has been disputed by the petitioner. The municipality contends that there is enough proof in evidence of earlier service of notice.

As the place where the construction has been raised falls within the Regulated Area, the petitioner ought to have raised construction only after obtaining a sanction plan from the Municipality and necessary permission from the Archaeological Survey of India and not prior thereto.

The submission that the petitioner is running business on the basis of the Certificate of Enlistment issued by the Municipality will certainly not help the petitioner in any manner whatsoever, as the business ought to be run from a place having legal sanction. The business cannot be permitted to be run from a premises which has been constructed illegally, contrary to the provisions of law. The Certificate of Enlistment cannot aid the petitioner in running business from any structure, not constructed in accordance with law.

The petitioner solely intends to hold on to a structure which cannot be permitted to stay as the same was constructed in contravention of not only the municipal law but also the Act of 1958. A law abiding citizen of the country ought not to make such prayer.

If the submission of the petitioner is to be accepted that the structure which has been raised by a party without obtaining any sanction plan be permitted to stand allegedly on account of certain technical defects in the order of demolition, then it will give out a very wrong message to the society at large and the builders who intend to raise construction without a sanctioned plan will get an opportunity to raise construction first and thereafter approach the Municipality, at their convenience, for regularization of the construction made. The petitioner is himself at fault by making construction within the Regulated Area, that too, without obtaining any sanction.

Any construction which has been made in an unauthorized manner ought not to be permitted to stand and immediate remedial steps should be taken for removal of the same at the earliest.

In view of the discussions made hereinabove, no relief can be granted to the petitioner in the instant case.

The writ petition fails and is hereby dismissed.

No costs.

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

(Amrita Sinha, J.)