

DL3 10.3.2023
SM Court No.15
ACO

WPA 5644 of 2023

Arin Ghosh

-vs-

Bardhaman Municipality & Ors.

Mr. Shuvasish Sengupta, Adv.
Mr. Soumyajit Mishra, Adv.

....for the petitioner.

Mr. Amal Kumar Sen, Ld. A.G.P.
Mr. Subhasis Bandopadhyay, Adv.

... for the Respondents

The writ petition has been presented, inter alia, challenging demolition order dated 22nd November, 2022 as well as demolition notice dated 28th February, 2023. Mr. Shuvasish Sengupta, learned advocate representing the petitioner in support of the case made out in the writ petition submits that the petitioner being the tenant who is running a shop in the premises in question could not participate in the hearing conducted by the concerned authority of the Burdwan Municipality on 22nd November, 2022 and no notice was served upon him prior thereto. It is also contended that notice of demolition was not served upon the petitioner and petitioner has come to know that the premises in question including his shop would be demolished on 10th March, 2023 from one communication dated 28th February, 2023 of the Chairman of Burdwan

Municipality addressed to the Superintendent of Police, Burdwan wherein on behalf of Municipality assistance was sought for which would facilitate the Municipality to carry on demolition work.

Mr. Amal Kumar Sen, learned Additional Government Pleader representing the Burdwan Municipality submits that the statements made in the writ petition are not correct. Before the hearing was conducted on 22nd November, 2022 in connection with the demolition proceeding notice was attempted to be served upon the petitioner first on 16th November, 2022 and subsequently on 21st November, 2022 but the same could not be served since it was endorsed that the petitioner was out of station. Another limb of submission made on behalf of the Municipality is there is misrepresentation on the part of the petitioner in the matter of receiving notice dated 3rd January, 2023 enclosing copy of demolition order dated 3rd January, 2023. It has been stated in Paragraph 13 of the writ petition that demolition order dated 22nd November, 2022 was not served upon the petitioner, however, fact remains, as it has been contended on behalf of the municipality upon placing documents before the Court that the petitioner received the order dated 3rd January, 2023 which was passed by the Municipality on the basis of hearing held on 22nd November, 2022, on 3rd January,

2023.

While considering the rival submissions made on behalf of the respective parties and the case made out in the writ petition this Court is required to strike a balance keeping in view of the fact that today is the date fixed for carrying out demolition work as it emanates from the communication dated 28th February, 2023, at Page 24 of the writ petition. It appears from the order dated 31st October, 2022 passed by a coordinate Bench on a writ petition being WPA No.5009 of 2021 (Suman Bardhan & Anr. vs. Burdwan Municipality & Ors.) that the Municipality was directed to proceed afresh in compliance with the previous direction of the Court dated 7th July, 2020 after affording effective hearing to all the concerned parties including the shop owners who are running business at the premises in question.

It is true that Municipality initiated proceeding in terms of the order dated 31st October, 2022 and accordingly fixed a date of hearing on 22nd November, 2022 but from the documents which are placed before this Court today on behalf of the Municipality it appears that since the petitioner was not present at his premises at the material point of time the notice of hearing could not be served upon him on 16th November, 2022 and on 21st November, 2022. This aspect is also reflected from the letter dated 8th December, 2022 of the learned

advocate of the occupants of the said premises that the petitioner was absent since he was out of station for his health check-up; therefore, a prayer for adjournment was made by the learned advocate so far petitioner was concerned.

It is true that inappropriate statement was made by the petitioner in Paragraph 13 of the writ petition regarding receipt of demolition order which petitioner received in 3rd January, 2023. At the same time, today if this Court does not interfere with the steps taken by the Municipality for demolishing the structure in question the resultant effect would be demolition of shop of the petitioner without getting opportunity to make deliberation before the Municipality as directed by the coordinate Bench vide order dated 31st October, 2022.

In order to render justice this Court finds it apt to grant an opportunity of hearing to the petitioner before final decision to be taken by the Municipality relating to his shop. Accordingly, the Board of Councillors of Burdwan Municipality is directed to hear the petitioner on 15th March, 2023 at 3.00 PM when petitioner will appear personally or through his authorised representative for making deliberation. Since the petitioner is represented by the learned advocate before this Court further service of notice upon the petitioner stands dispensed with.

However, it is made clear that this order is only confined to grant opportunity of hearing to the petitioner.

Needless to observe that till the decision to be taken by the Board of Councillors after granting an opportunity of hearing which is scheduled to be held on 15th March, 2023, the shop of the petitioner shall not be demolished. It has further been clarified that there is no fetter so far Municipality is concerned in implementing demolition order dated 3rd January, 2023 excepting the shop of the petitioner in accordance with law.

With the aforesaid observations and directions the writ petition stands disposed of.

Since the date of demolition has been fixed today, 10th March, 2023, learned advocate for the petitioner is granted leave to communicate the gist of the order to the Municipality pending communication of the certified copy.

Mr. Sen representing the Municipality is also directed to intimate the Municipality not to carry out the demolition work as directed by this Court hereinabove.

Copies of the documents placed before this Court on behalf of the Municipality are taken on record.

There shall be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be given to the parties upon compliance of

requisite formalities.

(Saugata Bhattacharyya, J.)