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WPA/5954/2023
NIRMAL PRAMANICK @ NIMU AND ANR.
VS
ARJUN PRAMANICK AND ORS.

Mr. Raghunath Chakraborty,
Mr. Bratin Kumar Dey,
Ms. Sabnam Sultana
..for the Petitioners.

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

In compliance of the direction passed by this Court on 14th February, 2022 in WPA 2311 of 2022 (Arjun Pramanick Vs. State of West Bengal & Others) the Bidhannagar Municipal Corporation considered the issue in question and passed an order on 22nd August, 2022 directing the parties to demolish all the unauthorised constructions erected without the sanctioned building plan within four weeks failing which the Corporation will take steps to demolish the same in accordance with the provisions of the West Bengal Municipal Corporation Act, 2006.

The structure of the petitioners was found to be constructed in an unauthorised manner without any supporting document.

As the petitioners failed to comply with the direction passed by the Corporation, a further notice was issued on 28th February, 2023 directing the parties to evacuate all necessary articles from the subject

premises and vacate the property so that the same may be demolished as the structure was unauthorised.

Upon receipt of the aforesaid notice the petitioners submitted an appeal before the Commissioner, Bidhannagar Municipal Corporation. After filing the alleged appeal along with application under Section 5 of the Limitation Act, the petitioners preferred the instant writ petition praying for a direction for quashing the impugned order of demolition and the subsequent notice directing evacuation and vacating the subject premises.

The impugned order of demolition mentions that there is no approved site plan in respect of Dag No.131. The entire plot has been constructed by few structures including one tiled roof structure (hutment) of Minati Pramanick, the petitioner no.2 herein.

The order of demolition further mentions that one newly constructed two storied building and one newly constructed one storied building is found to exist in the plot. No supporting document in support of the construction could be produced.

Learned Advocate representing the petitioners, on a query from the Court, mentions that the roof tiled structure does not belong to the petitioner no.2. It has been admitted that only the one storied structure at the subject premises belongs to the petitioners.

In support of the construction of the one storied structure it has been submitted that a building plan

was sanctioned for construction by the panchayat in favour of the petitioner no.1 in May, 1988. It has been submitted that only repairing work has been made and no construction work has been carried out as recorded in the impugned order of demolition.

Prayer has been made for producing and relying upon the said sanctioned plan issued by the panchayat before the concerned authority for consideration of the matter afresh.

It has further been submitted that as the plan was not ready available, the same could not be produced at the time of inspection or hearing.

Learned Advocate representing the Bidhannagar Municipal Corporation submits that enough opportunity was granted to the petitioners for production of documents in support of the construction. Despite repeated chances granted to the parties, no document was produced. There is nothing on record to show that the petitioners prayed for time for production of additional documents. The Corporation decided the matter in terms of the direction passed by the Court and passed order way back in August, 2022. The petitioners approached this Court after a considerable delay. The appeal preferred by the petitioners before the Commissioner cannot be considered as a valid one as the Commissioner is not the appropriate authority to decide the appeal.

It has been pointed out by the learned Advocate

representing the Corporation that though it has been submitted in Court that the petitioners are the owners of only the one storied building as mentioned in the impugned order of demolition, but in the appeal allegedly filed before the appellate forum, the petitioners claim to be owners of the two storied building.

I have heard the submissions on behalf of both the parties. As the learned Advocate for the petitioners clearly mentions that the petitioners are only concerned with the single storied building as mentioned in the order of demolition dated 22nd August, 2022, accordingly, the order passed herein shall be restricted to the single storied structure which the petitioners claim to own. The Corporation will be at liberty to take appropriate steps in respect of the other structures mentioned in the impugned order of demolition.

As regards the single storied structure, the petitioners rely upon a plan allegedly sanctioned by the panchayat in the year 1988. Prior to causing demolition of the structure of the petitioners, for ends of justice, one opportunity may be granted to the petitioners to produce the said plan before the Bidhannagar Municipal Corporation. The Corporation is directed to consider the plan and ascertain its veracity. If it appears that construction in question has been made relying upon the alleged sanctioned plan, then necessary steps shall be taken by the Corporation.

If it transpires that the construction is not in

accordance with the plan as produced by the petitioners, then steps to deal with such unauthorised construction shall be taken.

It is made clear that the Court has not entered into the genuinity of the plan produced before the Court and it will be open for the Corporation to decide the same.

The Corporation shall take steps in the matter at the earliest but positively within a period of eight weeks from the date of communication of this order.

The writ petition stands disposed of.

Affidavit of service is taken on record.

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

(Amrita Sinha, J.)