

03. 19.04.2023
Court No.6
Tanmoy Ghosh

MAT 447 of 2023

Prabir Kumar Bhadra & Ors.

-Versus-

Pritam Sarkar & Ors.

With

IA No: CAN/1/2023

With

IA No: CAN/2/2023

Mr. Arunava Ghosh, Adv.,
Mr. Puspall Chakraborty, Adv.,
Mr. Prisanika Ganguly, Adv.

...for the appellants.

Dr. Madhusudan Saha Ray, Adv.

...for the respondent no.1/
writ petitioner.

Mr. Dibyendu Chatterjee, Adv.,
Mr. Pritam Majumdar, Adv.

...for the Bhatpara Municipality.

Leave is granted to learned Advocate-on-Record for the appellants to file affidavit of service in course of the day.

In Re: IA No: CAN/1/2023

Although this application has been filed for condonation of delay in filing the appeal, as per the noting of the Stamp Reporter, there is no delay. The application being IA No: CAN/1/2023 is accordingly disposed of.

In Re: MAT 447 of 2023
With
IA No: CAN/2/2023

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

A judgment and order dated December 14, 2022, whereby the writ petition of the respondent no.1 herein being WPA 14355 of 2021 was disposed of, is under challenge in this appeal.

It appears that the respondent no.1 herein/writ petitioner approached the learned Single Judge with a grievance that the appellants herein have made construction in deviation from the sanctioned plan. A report was called for by the learned Single Judge from the Municipality. On December 14, 2022, the report appears to have been filed before the learned Single Judge. The learned Judge noted that the report revealed certain unauthorized construction in deviation from the sanctioned plan. The learned Judge directed the Municipality to take prompt necessary steps to deal with the unauthorized construction and also directed the Municipality to take steps for illegal occupation of the premises in question by the appellants herein, without obtaining completion certificate. Being aggrieved, the private respondents in the writ petition have come up by way of this appeal.

We are told that pursuant to the order impugned herein, certain proceedings were held before the Chairman of the Municipality. Subsequently, a notice dated February 23, 2023 was issued by the Chairperson of the Municipality under Section 218(5) of the West Bengal Municipal Act, 1993, calling upon the appellants herein to remove the unauthorized construction. The appellants herein challenged such notice by filing WPA 6091 of 2023. By a judgment and order dated April 5, 2023, the learned Single Judge disposed of the writ petition by setting aside the notice dated February 23, 2023 and by giving the following direction:

“The Board of Councillors, Bhatpara Municipality is directed to grant reasonable opportunity of hearing to all the necessary parties and conclude the proceeding at the earliest but positively within a period of eight weeks from the date of communication of a copy of this order.

By consent of all the parties and to avoid any further complication with regard to non-service of the notice of hearing, at the suggestion of all the parties the Court fixes April 20, 2023 at 2 p.m. as the date and time for hearing of the matter by the Board of Councillors of the Municipality. The parties will be at liberty to produce all documents before the Board of Councillors in support of their stand.”

We, therefore, see that a meeting is scheduled to be held before the Board of Councillors of the Municipality tomorrow (20.04.2023) at 2:00 p.m. The appellants herein and the writ petitioner shall participate in the meeting. The appellants will be at liberty to produce and rely upon all documents as they may be advised to try and establish that there is no unauthorized construction. The writ

petitioner will also be at liberty to rely upon all such documents as he may be advised. The Board of Councillors, if it deems necessary, may give further opportunity of hearing to the parties. However, the Board shall take a reasoned decision, in accordance with law, within a month from date. In the event, the Board decides that there is unauthorized construction and the same needs to be demolished, such order shall not be given effect to for a period of ten (10) days from the date of communication of the order to the concerned parties only to grant a breathing space to the affected parties.

We find no reason to interfere with the order impugned in this appeal, since the same has lost relevance because of subsequent developments, as noted above.

The appeal being MAT 447 of 2023 and the connected application being IA No: CAN/2/2023 are disposed of.

All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)