

12. 14.08.2023
Court No.6
Tanmoy Ghosh

MAT 461 of 2023

**Smt. Krishna Mukhopadhyay @ Mukherjee & Anr.
-Versus-
Burdwan Municipality & Ors.**

**With
IA No: CAN/1/2023**

Mr. Uday Sankar Chattopadhyay, Adv.,
Ms. Snigdha Saha, Adv.,
Ms. Trisha Rakshit, Adv.,
Ms. Aishwarya Datta, Adv.

...for the appellants.

Mr. Subhasis Bandopadhyay, Adv.

...for the Burdwan Municipality.

Mr. Pinaki Ranjan Mitra, Adv.

...for the respondent no.4/
writ petitioner.

Affidavit of service filed in Court today be kept with
the records.

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

A judgment and order dated February 16, 2023,
whereby the writ petition of the present respondent no.4
being WPA 13087 of 2016 (*Tapan Kumar Ghosh – Versus
– The Burdwan Municipality & Ors.*), was disposed of by a
learned Single Judge of this Court, is the subject-matter
of challenge in this appeal at the instance of the private
respondent nos. 4 and 5 in the writ petition.

The writ petitioner approached the learned Single
Judge with the grievance that private respondents in the
writ petition have raised unauthorized construction on

the adjacent land. Various arguments were advanced on behalf of the writ petitioner and the private respondents before the learned Single Judge. The learned Judge, placing reliance on a report filed by the Municipality before His Lordship, disposed of the writ petition with the following observations and directions:-

“In considered view of this Court since the private respondents have obtained a fresh sanctioned plan vide Burdwan Municipality office memo no. 159/E/VII-4 dated 08.06.2018 disclosing that the said Tin-shed garage has been demolished, a duty is cast upon the private respondents to demolish the said Tin-shed garage prior to making application for said sanctioned plan.

In view of the discussion made hereinabove, this Court in exercise of its plenary power directs the private respondent nos. 4 and 5 to pull down the Tin-shed, which was shown to have been demolished prior to obtaining sanctioned plan dated 08.06.2018 within a month from the date of passing of this order, failing which the respondent nos. 1 to 3 with the help of local police shall pull down the said Tin-shed garage as found by them while preparing the report dated 04.07.2018 within one month thereafter and till such demolition is completed, the validity of the sanctioned plan vide office memo no. 159/E/VII-4 dated 08.06.2018 shall remain suspended.

In the event, such demolition is made by the Burdwan Municipality, the cost of such demolition shall have to be recovered from the private respondent nos. 4 and 5 and that cost shall remain as first charge on the property of the private respondents.”

Being aggrieved, the private respondents in the writ petition have come up by way of this appeal.

Mr. Chattopadhyay, learned Advocate appearing for the appellants, says that the learned Judge should not have passed a mandatory direction for demolition of the structure in question. The structure is in any event not a

permanent structure. A procedure has been laid down in Section 218 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the 'said Act') for the Municipality to deal with alleged unauthorized constructions. Such procedure contemplates observance of principles of natural justice by permitting the person responsible to participate in the proceedings. Accordingly, learned Counsel for the appellants submitted that the order under appeal should be set aside.

Learned Advocate for the respondent no.4/writ petitioner says that initially the appellants had obtained a sanctioned plan from the Municipality in the year 1999. They made construction in violation of such plan. Before the learned Single Judge they produced another sanctioned plan of 2018. That plan showed that the structure impugned in the present proceedings would be demolished. Hence, the learned Judge was justified in directing demolition of the impugned structure.

Learned Advocate for the Municipality says that whatever orders this Court may pass, would be carried out by the Municipality.

We have considered the rival contentions of the parties. We are of the opinion that in view of disputed questions of fact being involved, it may not be appropriate for the writ Court to pass any mandatory direction. Section 218 of the said Act provides for a

procedure to be followed by the concerned Municipality before passing an order of demolition of any alleged unauthorized structure. That Section has the principles of natural justice inbuilt in it.

We see that the respondent no.4/writ petitioner has made several representations addressed to the Chairman of the Burdwan Municipality. Copies of such representations have been annexed at page 37 onwards of the stay application. We direct the Board of Councillors of Burdwan Municipality to initiate appropriate proceeding, in accordance with law, on the basis of such representations and carry the same to its logical conclusion, after giving opportunity of hearing to all concerned parties including the present appellants and the respondent no.4/writ petitioner. The Board of Councillors will pass a reasoned order, in accordance with law, within a period of eight weeks from the date of communication of this order by the parties to the Chairman of the Board of Councillors, accompanied by copies of the representations made by the writ petitioner.

We make it clear that we have not gone into the merits of the disputes between the parties. The Board of Councillors shall take an informed decision, in accordance with law, uninfluenced by any observations in the order under appeal or in this order.

The order under appeal is accordingly set aside.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 461 of 2023 and the connected application being IA No: CAN/1/2023 are accordingly disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)