

Item No.4

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

29.03.2023
Ct-24

WPA 6479 of 2023
Dr. Rajashree Ray Bandyopadhyay
v.
The Bidhannagar Municipal Corporation & Ors.

Mr. Surajit Nath Mitra
Mr. Sayantan Bose
Mr. Sarbajit Mukherjee
... for the petitioner.

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

Mr. Dyutiman Banerjee
... for the respondent no. 7.

The order dated November 26, 2022 passed by the Joint Municipal Commissioner, Bidhannagar Municipal Corporation is impugned in the present writ petition. The impugned order refers to the writ petition being WPA No. 2090 of 2022 (Dr. Partha Sarathi Ray v. The Bidhannagar Municipal Corporation & Ors.).

The Court vide order dated February 21, 2022 in WPA 2090 of 2022 passed direction upon the competent authority of the Bidhannagar Municipal Corporation to decide the allegation of unauthorized construction and of building, re-building and re-construction of the subject premises. The Court specifically laid down the procedure in accordance with which the adjudication was to be made.

By a further order dated May 12, 2022 passed in WPA 5501 of 2022 (Partha Sarathi Ray v. Bidhannagar Municipal Corporation & Ors.) the Court fixed May 24, 2022, 2 p.m. as the date and time for inspection of the subject property.

After the inspection was conducted the Commissioner, Bidhannagar Municipal Corporation afforded an opportunity of hearing to both the petitioner and the private respondent and passed order on July 22, 2022 directing both the parties to approach the appropriate authority to record their names as recorded lessees in respect of the property from the Urban Development and Municipal Affairs Department, Government of West Bengal as per the prevailing rules and regulations. Meanwhile both the parties were directed to restrain from altering the status quo of the property in any manner whatsoever or to let out the premises for any other purposes without further instruction.

In the reasoned order dated July 22, 2022 the Commissioner recorded the submissions made on behalf of both the parties.

After the order was passed by the Commissioner on July 22, 2022, the Joint Municipal Commissioner passed further order on November 26, 2022 directing the petitioner herein, being the occupier of the premises, to demolish the illegal, unauthorized construction within a period of two weeks from the date of receipt of the order and to stop all sorts of commercial activities at the subject premises forthwith, failing which, the Corporation would be compelled to take appropriate steps to demolish the unauthorized construction and

stop illegal commercial activity and recover the expenses of such demolition as arrear of property tax.

In response to the aforesaid order dated November 26, 2022 a communication was made by the petitioner to the Joint Municipal Commissioner on December 7, 2022. The Commissioner, Bidhannagar Municipal Corporation in terms of the order dated November 26, 2022 directed the petitioner to evacuate all necessary articles from the subject premises and to vacate the subject property within two weeks for effecting the demolition work.

The aforesaid communication dated February 28, 2023 was received by the petitioner on March 1, 2023. The present writ petition has been filed on March 16, 2023.

The petitioner is aggrieved by the act of the Commissioner directing the petitioner to vacate the premises for effecting the demolition work. The petitioner submits that the Commissioner disposed of the matter on July 22, 2022. The Commissioner did not pass any order for demolition of the alleged unauthorized structure but directed the parties to approach the appropriate authority for mutation and restrained the parties for altering the status quo and not to let out the subject premises for any purpose without any further instruction.

It has been submitted that after the disposal of the matter by the Commissioner on July 22, 2022, the Joint Municipal Commissioner did not have authority to reopen the matter and decide the same afresh.

It has been submitted that the order dated November 26, 2022 was passed by the Joint Municipal

Commissioner without affording any opportunity of hearing to the petitioner. Though, there is a recording in the order dated November 26, 2022 that a hearing was conducted in the chamber of the undersigned, but in fact, no hearing was taken by the Joint Municipal Commissioner.

It has been contended that the order passed by the Joint Municipal Commissioner on November 26, 2022 is without jurisdiction and any consequential order passed thereto is bad in law.

Prayer has been made for setting aside the order of the Joint Municipal Commissioner dated November 26, 2022 and the subsequent impugned communication dated February 28, 2023.

Learned advocate representing the private respondent submits, upon instruction that, the learned advocate representing the petitioner already admitted the act of unauthorized construction at the behest of the petitioner and the same is recorded in the order of the Commissioner dated July 22, 2022.

It has been submitted that as unauthorized construction has been detected, accordingly, consequential steps are required to be taken to demolish the same. The Commissioner acted in accordance with the submission on behalf of the petitioner recorded in the order dated July 22, 2022.

It has further been submitted that the order dated July 22, 2022, being an interim order, the matter was finally decided on November 26, 2022.

It has been submitted that the petitioner approached this Court long after the order of demolition was passed in November 2022 and after the expiry of the

time period mentioned in the communication dated February 28, 2023. Prayer has been made for dismissing the writ petition.

Learned advocate representing the Bidhannagar Municipal Corporation submits that as the person responsible admitted unauthorized construction, accordingly, the Bidhannagar Municipal Corporation passed consequential order for demolition of such unauthorized construction. The petitioner is also guilty of letting out the property for commercial use without obtaining permission from the Bidhannagar Municipal Corporation.

It has been submitted that the Corporation will be liable for contempt, if the order of demolition is not passed despite admission of unauthorized construction at the instance of the person responsible.

It has been submitted that the act of the Corporation directing stoppage of illegal commercial activity at the subject premises is already under challenge in a separate writ petition (WPA 27215 of 2022, WPA 27217 of 2022 and WPA 27200 of 2022) at the instance of the parties who are in actual possession of the same and the Court was pleased not to interfere with the said order.

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

It appears that the Court in WPA 2090 of 2022 and WPA 5501 of 2022 passed direction and laid down the procedure and manner in which the allegation of unauthorized construction is to be dealt with by the Bidhannagar Municipal Corporation.

The Commissioner being the competent authority afforded an opportunity of hearing to the parties and passed order on July 22, 2022 directing the parties for mutating their names and restrained them from altering the status quo of the property and further not let out the premises for any purpose without further instruction. The Commissioner, for any reason whatsoever, did not pass the order of demolition on the said date.

From the order passed by the Commissioner it does not appear that the said order was an interim order. Despite recording that there were deviations and the property was let out for commercial use without obtaining permission of the competent authority, the Commissioner did not pass any order of demolition of the unauthorized construction.

It is always for the Commissioner to pass consequential orders after recording the fact of unauthorized construction; but it is not open for the Joint Municipal Commissioner to step in and fill up the gap which has been left open by the Commissioner.

Though the Joint Municipal Commissioner records that hearing was conducted by him, but the parties submit that no opportunity of hearing was granted by the Joint Municipal Commissioner prior to passing the order on November 26, 2022.

In the event it appears to the Commissioner that any further order is required to be passed, then the Commissioner may afford further opportunity of hearing and pass necessary consequential orders.

The act of the Joint Municipal Commissioner in passing the order of demolition and the act of the

Commissioner, Bidhannagar Municipal Corporation in directing the petitioner to vacate the premises for implementing the order of demolition cannot be supported in law.

In view of the above, the impugned order of the Joint Municipal Commissioner dated November 26, 2022 and the subsequent communication of the Commissioner dated February 28, 2022 are, accordingly, set aside and quashed.

It will be open for the Commissioner of the Bidhannagar Municipal Corporation to take all steps in accordance with law to deal with any unauthorized construction and/or change of use of the subject premises after giving reasonable opportunity of hearing to all the parties.

The Commissioner shall act in accordance with the direction passed by the Court in WPA 2090 of 2022 and WPA 5501 of 2022 at the earliest but positively within a period of six weeks from the date of communication of a copy of this order

The writ petition stands disposed of.

Leave granted to the learned advocate-on-record of the petitioner to correct the date of the order passed by the Joint Municipal Commissioner as mentioned in the prayer of the writ petition. The correct date will be November 26, 2022 and not November 29, 2022.

Affidavit-of-service and the notice dated March 27, 2023 by the learned advocate of the petitioner be retained with the records.

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

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(Amrita Sinha, J.)