

01 & ML 1079
10.04.2023
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 8400 of 2023

**Sanjoy Das & Anr.
-versus-
The State of West Bengal & Ors.**

With

W.P.A. 7064 of 2023

**Keya Kar
-versus-
The State of West Bengal & Ors.**

**Mr. Ranajit Chatterjee,
Mr. Nilratan Banerjee,
Mr. Arijit Dey.
...For the Petitioners in W.P.A 8400 of
2023 and for the Respondent No. 6 in
W.P.A. 7064 of 2023.**

**Mr. Ansar Mondal,
Ms. Srilekha Bhattacharyya.
...For the State.**

**Mr. Soumya Majumder,
Mr. Subrata Mukherjee.
...For the Respondent No.4 in W.P.A 8400
of 2023 and for the Petitioner in
W.P.A. 7064 of 2023.**

**Mr. Sudarsan Roy,
Mr. Debyan Ghosh,
Mr. Romit Bose,
Mr. D. Majumdar.
...For the Municipality.**

Two writ petitions being WPA 8400 of 2023 and
WPA 7064 of 2023 are taken up for consideration
together.

The petitioner no.1 Sanjoy Das in WPA 8400 of 2023 has been impleaded as the respondent no.6 in WPA 7064 of 2023. The private respondent no.4, Keya Kar in WPA 8400 of 2023 is the petitioner in WPA 7064 of 2023.

Both the writ petitions relate to the premises no. B-1, Mandir Park, Ward No.-2, Kolkata-700051 under the jurisdiction of North Dum Dum Municipality. The premises in question is suffering an order of demolition passed way back in the year 2008.

The order of demolition was challenged before the appellate forum by the predecessor-in-interest of Sanjoy Das and Sipra Das, the petitioners in WPA 8400 of 2023. The aforesaid Sanjoy Das and Sipra Das impleaded themselves as appellants in the pending appeal on the death of the erstwhile appellant.

The said appeal being M.A No. 2 of 2008 stood dismissed for non-prosecution on the petition filed by the appellants. The learned court while passing the order dismissing the appeal for non-prosecution on 28th March, 2016 records that the plaintiff is not willing to proceed with the suit and prays for dismissal of the suit for non-prosecution.

It appears that after the appeal stood dismissed, North Dum Dum Municipality afforded the said Sanjoy Das and another an opportunity of hearing in the meeting of the Board of Councillors held on 31st August, 2016.

On the said date, Sanjoy Das appeared in the meeting and the Board of Councillors unanimously took a decision to demolish the unauthorized portion of the

building which was constructed in deviation from the sanctioned plan within fifteen days from the date of receipt of the letter.

The order of the Board of Councillors was communicated to Sanjoy Das and another with a copy forwarded to Keya Kar in September 2016.

Though the Municipality directed demolition of the deviated portion within fifteen days, but for reasons best known to the Municipality, steps for demolition were not taken immediately thereafter.

The aforesaid Keya Kar filed the writ petition being WPA 7064 of 2023 seeking implementation of the order of demolition.

After receiving a copy of the writ petition of Keya Kar, the Municipality issued notice in favour of the petitioners Sanjoy Das and Sipra Das on 29th March, 2023 mentioning that 12th April, 2023 is the date fixed when the Municipality shall take steps for demolition of the unauthorized construction.

Sanjoy Das and Sipra Das filed the writ petition being WPA 8400 of 2023 with a prayer to set aside the order of demolition passed on 1st August, 2007 communicated in the year 2008 and further prayer not to proceed with the notice dated 29th March, 2023.

Sanjoy and Sipra submits that the impugned order of demolition was already challenged in the appeal and it is only on the assurance given by the Municipality that the alleged unauthorized construction will be regularized that the appeal was not proceeded and stood dismissed for non-prosecution.

It has been submitted that the Municipality went back on the assurance given and has sought to implement the order of demolition.

Prayer has been made by Sanjoy and Sipra Das to permit them to challenge the order of demolition afresh before the appellate forum.

The prayers of Sanjoy and Sipra are opposed by the learned advocate appearing for the North Dum Dum Municipality and Keya Kar.

It has been submitted that the appeal was dismissed as 'not pressed' in March 2016 and thereafter, the Municipality communicated the decision to demolish the unauthorized construction in September 2016. Sanjoy and Sipra Das did not take any steps to challenge the said order.

Only after the Municipality issued notice of demolition on 29th March, 2023 after service of a copy of the writ petition filed by Keya Kar seeking implementation of the order of demolition, Sanjoy and Sipra filed the subsequent writ petition.

Learned advocate appearing for the Municipality specifically denies that any assurance was given to Sanjoy and Sipra for regularization of the unauthorized construction.

The respondents pray for dismissal of the writ petition filed by Sanjoy and Sipra.

After hearing the submissions made on behalf of all the parties, it appears that the initial order of

demolition was under challenge in the appeal filed in the year 2008.

The petition seeking withdrawal of the appeal mentions that the appellants i.e. Sanjoy and another met the Municipality personnel and they were kind enough to reconsider the matter. As per the letter of the Municipality, the appellants withdrew the appeal with assurance that they will consider the matter in the light of the previous judgment. The petition for withdrawal of appeal is annexed as Annexure P-12 at page 92 of WPA 8400 of 2023.

The letter of the Municipality as referred to in the petition seeking withdrawal of the appeal is not annexed. What transpired between the Municipality and the appellant is not before the Court. What is available on record is the communication dated 23rd September, 2016 which specifically mentions about a hearing afforded to Sanjoy and Sipra by the Board of Councillors in the meeting scheduled on 31st August, 2016 and in the presence of the parties unanimous decision was taken for demolition of the unauthorized portion within fifteen days.

Had Sanjoy and Sipra been genuinely aggrieved by the order of demolition communicated by the communication dated 23rd September, 2016, they ought to have approached the appellate forum in proper time. The fact that the Municipality did not take any steps for implementing the order of demolition is no reason for the aggrieved party not to challenge the same before the appropriate forum in due time.

By now the order of demolition passed in the year 2016 has attained finality and the same is required to be implemented by the Municipality.

The Municipality has issued notice for implementing the same. After the said notice was issued on 29th March, 2023, Sanjoy and Sipra woke up from their deep slumber and filed the writ petition on 4th April, 2023.

Instead of approaching the writ court, the aggrieved party ought to have approached the appellate forum. The writ court is not the appropriate forum to scrutinize the legality of the order of demolition. At this stage, interfering with the demolition proceeding will be absolutely improper and prejudicial to the interest of Keya. Valuable right has accrued in favour of Keya and any order passed touching the order of demolition will amount to infringing the right of Keya.

In view of the above, no relief can be granted to Sanjoy Das and Sipra Das in the writ petition. The writ petition being WPA 8400 of 2023, accordingly, fails and is hereby dismissed.

The Municipality shall take steps to implement the order of demolition in accordance with law.

The writ petition being WPA 7064 of 2023 stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)