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In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

01.09.2023
Ct-24

WPA 7358 of 2023
Ranjan Kumar Maity
v.
The State of West Bengal & Ors.

With

WPA 17615 of 2023
With
WPA 6243 of 2021
Sri Rajesh Kumar Shaw & Anr.
v.
The Panihati Municipality & Ors.

Mr. Partha Sarathi Mondal
... for the petitioner in WPA 7358 of 2023
& Private respondent in WPA 6243 of 2021.

Ms. Joyeeta Sinha
... for the State in WPA 7358 of
2023.

Mr. Soumyajit Bhatta
Mr. Sunayan Bose
... for the Panihati Municipality.

Mr. Rahul Karmakar
Mr. Abirlal Chakravorti
Mr. Saunak Mukherjee
... for the petitioner in WPA 6243 of 2021
and WPA 17615 of 2023
& for the private respondents in WPA
7358 of 2023.

Sri Rajesh Kumar Shaw and another filed the writ
petition being WPA 6243 of 2021 challenging the order of
demolition communicated vide letter dated February 23,
2021. The said order was passed allegedly in compliance
of the direction passed by the Court in WPA 11658 of
2020.

By the said order the petitioners were directed to remove the unauthorized tin shed as the same was set up without any approval from the municipal authority.

During pendency of the writ petition a further hearing was conducted and a further order of demolition was passed and communicated to Sri Rajesh Kumar Shaw vide communication dated March 22, 2023. The communication mentions that the corrugated tin shed constructed by the petitioners is dangerous in nature and accident may happen at any time. Direction was passed to remove the corrugated tin shed with its iron structure within seven days.

Sri Ranjan Kumar Shaw contends that the reason for passing the order of demolition and removal of the tin shed is not mentioned.

It has been submitted that the Court on the earlier occasion specifically directed the authority to take a decision as to whether there is any requirement under law to obtain a sanction/permission for construction of the tin shed. There is no reflection in the order of demolition communicated to the petitioner either on February 23, 2021 or March 22, 2023 with regard to the aforesaid direction.

Sri Ranjan Kumar Maity filed the writ petition being WPA 7358 of 2023 seeking for a direction upon the Municipality for implementation of the order of demolition.

Learned advocate representing the Panihati Municipality produces the inspection report which was conducted allegedly in compliance of the direction passed by the Court in WPA 11658 of 2020. The

inspection report mentions that the structure at the subject premises was inspected and it was found that the ground and first floor was sanctioned in favour of the erstwhile owner but the copy of the sanctioned plan was not available with the Municipality and copy of the said plan was not produced by the subsequent purchaser of the subject property i.e. Sri Rajesh Kumar Shaw despite requests made by the municipal authority.

It was also found that there is no sanction of the building plan/approval by the Municipality with regard to construction of the 2nd floor and the Puja room at the roof of the structure.

It was further found that there are deviations made by the erstwhile owner. No statutory side open spaces were left at the time of construction.

Sri Rajesh Kumar Shaw did not allow the officials of the Municipality to take proper measurement of the building and the top two floors. The roof shed is very dangerous and the Municipality has doubt with regard to the stability of the said construction. If the same is allowed to stand, then accident may occur at any point of time and lives of the local/adjacent locality may be in danger.

From the inspection that has been produced in Court today it appears that there are several reasons for passing the order of demolition. However, the said reasons were never communicated to the person responsible for making construction.

Law demands that the person responsible should be afforded a reasonable opportunity of hearing to defend all the points raised against him.

In the present case though, there are several materials mentioned in the inspection report, but neither the inspection report nor the ground relying upon which the order of demolition was passed, was communicated to the person responsible.

In view of the above, the order of demolition that has been communicated to the petitioner appears to be an incomplete one, contrary to the principles of natural justice and hence liable to be set aside and is, accordingly, set aside.

The Municipality is directed to immediately forward a copy of the inspection report to all the petitioners of the three writ petitions and afford a reasonable opportunity of hearing to all the necessary parties including the petitioners in all the three writ petitions and thereafter the Board of Councillors of the Municipality shall take a decision in the matter.

The parties will be at liberty to produce relevant documents including the sanctioned plan before the authority at the time of hearing. A decision shall be taken in the matter at the earliest but positively within a period of eight weeks from the date of communication of a copy of this order.

It is made clear that all the above writ petitions are disposed of only after taking into consideration the allegation of unauthorized construction. The prayer of Sri Rajesh Kumar Shaw regarding mutation is not considered herein.

Leave granted to Sri Rajesh Kumar Shaw and another to apply before the competent forum in

accordance with law for redressal of their grievances as regards mutation, if so advised.

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.)