

17.05.2023
Item No.9.
Court No.6.
AB

**M.A.T. 567 of 2023
With
I A CAN 1 of 2023**

**Avijit Kower & Others
Vs
Subir Konar @ Subir Kower & Others**

Mr. Prantick Ghosh,
Mr. Bitan Das ...for the Appellants.

Mr. Rabindra Narayan Dutta,
Mr. Arkoday Mukherjee ...for the Municipality.

Mr. Amal Kr. Mukhopadhyay,
Mr. Rajesh Jana,
Mr. Palash Chakraborty,
Ms. Anindita Banerjee
...for the Respondent Nos.1 to 3.

Read order dated April 19, 2023.

One of the issues raised by the appellants is that the order of demolition having been passed by the Chairman of the Municipality and not by the Board of Councillors, the order is without jurisdiction and a nullity.

We had called for a report from the Municipality. Such report in the form of affidavit, affirmed by the Executive Officer of the Municipality on May 12, 2023, has been filed in Court today. Let the same be kept with the records.

In the said report, at paragraph 8, it has been stated as follows:

“8. That I state that the appellants, who constructed the pucca wall with corrugated tin shed structure without any sanctioned plan is totally illegal. The proceedings as initiated under the wrong nomenclature and to that effect notice issued by the Chairman may be technical defect and I being the Executive officer undertakes that the if this Hon’ble Court directs, fresh proceedings may be initiated under the provisions of Section 218 of the West Bengal Municipal Act, 1993.”

Mr. Dutta, learned Counsel appearing for the Municipality, in his usual fairness, says that it is a fact that the Chairman did not have authority to issue a demolition order under Section 218 of the West Bengal Municipal Act, 1993. Further, under Section 220 of the Act, the Chairman had no power to issue “stop work” order. Mr. Dutta fairly says that the entire matter may be considered afresh by the Board of Councillors of the Municipality. We appreciate such fair stand of Mr. Dutta.

Accordingly, the order under appeal and the demolition order in question are set aside. The Board of Councillors of the Municipality will initiate fresh proceedings and, if necessary, will conduct fresh inspection in the presence of all concerned parties and shall pass a fresh reasoned order in accordance with law and the applicable Rules and Regulations within a period of eight weeks from the date of receipt of a copy of this order, after affording opportunity of hearing to

all concerned parties including the appellants and the writ petitioners herein.

Needless to say, if the Board of Councillors comes to the conclusion that the impugned construction is unauthorized/illegal, immediate action will be taken for demolition of the same in accordance with law.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

MAT 567 of 2023 stands disposed of along with CAN 1 of 2023.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)