

Item No.11

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

17.05.2023
Ct-24

WPA 7777 of 2023
Rupa Dasgupta @ Chowdhury
v.

The Bidhan Nagar Municipal Corporation & Ors.

Mr. Mukteswar Maity
Ms. Manika Sarkar
Ms. Priyanka Yadav
... for the petitioner.

Mr. Utpal Moitra
Mr. Abirlal Chakraborty
... for the respondent no. 5.

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

The petitioner seeks implementation of the order of demolition passed by the Commissioner, Bidhannagar Municipal Corporation on January 18, 2017 allegedly in compliance of the direction passed by the Court in WP 12686 (W) of 2011 with CPAN 520 of 2014 (Rupa Dasgupta @ Chowdhury v. Tapas Chatterjee, Chairman, Rajarhat-Gopalpur Municipality).

It appears that the Commissioner relied upon the report of the Executive Engineer to pass the order of demolition.

The Executive Engineer caused an enquiry and submitted a report mentioning that the private respondent made construction without sanctioned building plan encroaching upon the portion of the petitioner in the ground floor to the first floor. On the

finding of encroachment, the Commissioner opined that there has been illegal and unauthorized construction and invoked provision of 266 of the West Bengal Municipal Corporation Act, 2006 and directed the private respondent to demolish the unauthorized portion which was constructed by way of encroaching the portion of the petitioner's part.

The private respondent being aggrieved by the order of demolition preferred an appeal before the Mayor. By the time the appeal was preferred before the Mayor, the West Bengal Municipal Corporation Act, 2006 got amended and the power of the Mayor as the appellate authority was taken away.

The private respondent being unaware of the amendment preferred a writ petition before this Court challenging the order of demolition. The Court being made aware of the fact of pendency of the appeal directed the appellate authority to dispose of the same at the earliest.

Later on it transpired that the Mayor was not the appropriate authority to decide the appeal. The said fact was not communicated to the private respondent. The private respondent was under the impression that the appeal was still pending.

As on date, what remains, is the order of demolition passed by the Commissioner, Bidhannagar Municipal Corporation on January 18, 2017 which the petitioner seeks implementation of.

Upon perusal of the said order it is very clear that the order of demolition has been passed on the finding returned by the Executive Engineer that construction

was made by encroaching a part of the petitioner's portion.

Neither the Executive Engineer nor the Commissioner of the Corporation is the appropriate authority to decide the issue of encroachment.

The Corporation ought to have restricted the consideration only with regard to unauthorized construction and not venture into deciding the civil rights of the parties.

The private respondent asserts that the construction is in place from 2007 and the same is also reflected in the order of the Commissioner. It was for the Commissioner to take a call as to whether the said construction was made in accordance with the provisions of law and whether after existence of the said structure for so many years is there any requirement of passing an order of demolition. The Corporation ought not to have entered and decided any private disputes in between the parties.

It has been submitted by the learned advocate representing the Bidhannagar Municipal Corporation that since the writ petition is not at the instance of the private respondent and none of the parties have challenged the order of demolition, accordingly, it may not be proper for the Court to decide the legality of the order passed by the Commissioner.

The Court is of the opinion that on the face of record the order passed by the Commissioner cannot be substantiated in law. In such a situation, not interfering with the order and keeping the same in abeyance to be challenged by the aggrieved party before the appropriate

forum will amount to generation of a fresh litigation which can be avoided if the impugned order is set aside at this stage with a direction upon the Commissioner to decide the issue afresh. Multiplicity of litigation may be avoided if the said approach is followed.

In view of the above, the instant writ petition is disposed of by setting aside the order passed by the Commissioner, Bidhannagar Municipal Corporation on January 18, 2017 modified by the corrigendum dated January 19, 2017.

It will be open for the Commissioner, Bidhannagar Municipal Corporation to decide the issue of unauthorized construction afresh after giving reasonable opportunity of hearing to the petitioner as well as the private respondent for production of necessary documents in support of the construction made.

A decision shall be taken in the matter at the earliest but positively within a period of twelve weeks from the date of communication of this order.

Affidavit-in-opposition filed on behalf of the private respondent be retained with the records.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

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(Amrita Sinha, J.)