

D/L
Item No 02
03.05.2023
KOLE

**MAT 638 of 2023
With
IA No. CAN 1 of 2023**

**Sandip Chatterjee
-Vs.-
Prabir Bose & Ors.**

*Mr. Biswaroop Bhattacharyya,
Mr. Dipayan Kundu,*

...for the appellant.

*Mr. Syamal Kr. Das,
Mr. Ajoy Barman Roy,*

...for the respondent no. 1.

Mr. Suman Basu,

...for the Municipal Corporation.

By consent of the parties the appeal and the application are taken up for hearing together.

A judgment and order dated March 23, 2023, whereby the writ petition of the respondent nos. 1 to 3, being WPA 19726 of 2021, was disposed of by a learned Judge, is under challenge in this appeal. The appellant was the private respondent in the writ petition.

The writ petition was filed for implementation of an order of demolition for alleged unauthorized structures put up by the appellant herein. The learned Judge directed implementation of the demolition order. Hence this appeal.

A preliminary point has been raised by Mr. Bhattacharyya, learned Advocate for the appellant, to the effect that the demolition order is without jurisdiction and non-est in the eye of law. Hence, the same cannot be implemented. This is because, the demolition order has

been issued by the 'Bastukar' (Engineer) and not by the appropriate authority under Section 266 of the West Bengal Municipal Corporation Act, 2006 (in short the "2006 Act").

On the day when the appeal was admitted, i.e. on April 18, 2023, the learned Advocate for the Corporation had drawn our attention to Section 47 of the 2006 Act which permits delegation of powers and functions of the Commissioner to any other officer or any employee of the Corporation. We had requested learned Advocate for the Corporation to come back with instructions as to whether or not there was, in fact, any such delegation by the Commissioner.

On April 26, 2023, a further order was recorded, which we need not advert to.

Today, learned Advocate for the Corporation fairly and candidly submits that in spite of search, no order of delegation could be found in the records of the corporation. In that view of the matter, the only avenue would be to set aside the demolition order as being without jurisdiction and directing the appropriate authority under Section 266 of the 2006 Act, to initiate fresh proceeding and carry the same to its logical conclusion after giving an opportunity of hearing to all concerned parties.

Accordingly, the order under appeal as well as the demolition order issued by the Bastukar are set aside. The Commissioner of the Corporation is directed to initiate fresh proceedings under Section 266 of the 2006 Act and carry the same to its logical conclusion. In the fresh proceeding

opportunity of hearing shall be granted to all concerned parties including the appellant and the writ petitioners herein. The parties will be allowed to file and rely on whatever documents they may be advised. The order will naturally be a reasoned order. The entire exercise shall be completed within six weeks from the date of communication of this order to the Commissioner of the Corporation.

We have not gone into the merits of the case. The Appropriate Authority shall take an informed decision in accordance with law.

Needless to say, if the Corporation or the writ petitioners intend to rely on any document at the fresh hearing, advance copy of the same shall be made available to the appellant herein. Likewise, if the appellant intends to rely on any document at the fresh hearing, advance copy thereof should be made available to the Corporation and the writ petitioners.

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

The appeal and the connected application are, accordingly, disposed of.

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

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)