

07. 28.08.2023
bd. Ct.15

W.P.A. 7855 of 2018

Biman Ganguly and Anr.

-vs-

The State of West Bengal & Ors.

Mr. Dibyendu Chatterjee
Ms. Barnali Gantait ... for the petitioners.

Mr. Samiran Mandal
Mr. Abhinaba Dan ... for the Bankura
Municipality

Mr. Dipankar Dandapath ... for respondent no.6.

Petitioners are the owners of R.S. Plot no. 6669 whereas adjacent road of the Bankura Municipality falls on R.S. Plot No. 6670. Question arises for consideration in this writ petition whether petitioners by raising boundary wall have made obstructions on the municipal road which is adjacent to the plot of the petitioners and encroachment made over the municipal road by extending first floor of the premises of the petitioners by cantilever. Respondent no. 6 has made objection to the constructions made by the petitioners partially blocking municipal road and encroachment over the municipal road by using cantilever by lodging a complaint before the concerned authority of Bankura municipality. Subsequently respondent no. 6 filed a writ petition being WPA 13535 of 2015 which was disposed of by a coordinate Bench vide order dated 8th January, 2018 directing the Bankura Municipality to take into account the alleged blocking of the road and

construction of a cantilever on R.S. Plot no. 6670 and if necessary hold an inspection at the locale in order to find out veracity of the allegations made by the respondent no.6 who was the petitioner before the coordinate Bench and pass a reasoned order. Pursuant to the order passed by the coordinate Bench on 8th January, 2018 the Chairman of the Municipality was permitted by the Board of Councilors of the Bankura Municipality vide resolution dated 5th March, 2018 to take steps. An inspection was conducted at the instance of the municipality and it was found that the road on R.S. Plot No. 6670 of Bankura Mouza was blocked by constructing wall at both end in front of the premises of the petitioners which is at R.S. Plot no. 6669 and there was an encroachment by extension of first floor upon constructing a cantilever. It appears from the order dated 21st May, 2018 that hearing was fixed by the Municipality on 23rd March, 2018 when time was obtained on behalf of the petitioners herein and the hearing was adjourned considering the medical ground taken and the next date was fixed on 6th April, 2018. On 6th April, 2018 petitioners herein again prayed for time due to pendency of an intra court appeal being MAT 349 of 2018 before the Hon'ble Division Bench and matter was again fixed on adjournment on 21st May, 2018. However, from the side of the petitioners no order of the Hon'ble Division Bench could be produced before the concerned authority of the Municipality and accordingly final order was passed by the municipality which is at page 33 of the writ petition.

It has been submitted during course of hearing today that the appeal preferred on behalf of the petitioners being MAT 349 of 2018 was dismissed by the Hon'ble Division Bench vide order dated 13th June, 2018 on the ground of non-prosecution.

While considering the validity of the order dated 21st May, 2018 passed by the concerned authority of Bankura Municipality this Court granted opportunity to the municipality as well as respondent no. 6 to file report and affidavit respectively. Report has been filed before this Court dated 18th July, 2023 by the Chairman of Bankura municipality based on inspection report of the Sub-Assistant Engineer of Bankura Municipality dated 12th July, 2023 which corroborates the contents of the impugned order dated 21st May, 2018 passed by the concerned authority of Bankura Municipality pursuant to the order passed by the coordinate Bench on 8th January, 2018. In addition thereto an affidavit has been affirmed on behalf of respondent no. 6 on 30th June, 2023 enclosing corrected L.R.Mouza map in order to demonstrate before this Court that the road falls on R.S. Plot no.6670 is not a blind road but the same has been encroached by constructing boundary wall by the petitioners.

Today, writ petitioners are represented by learned advocate who has filed an affidavit in order to deal with the report of the Bankura Municipality dated 18th July, 2023 and the affidavit affirmed on behalf of the respondent no. 6 on 30th June, 2023.

Notice of this Court has been drawn to

relevant parts of the affidavit used on behalf of the petitioners, specifically from paragraph 4 it appears that there is an admission on the part of the petitioners that the plot of the petitioners on which alleged construction has been made falls on R.S. Plot no. 6669 whereas the municipal road falls on R.S. Plot No. 6670. Therefore from the averments made in the said affidavit it transpires that there is no overlapping so far as demarcation of these two plots being R.S. Plot No. 6669 and R.S. Plot No. 6670.

Now, the issue comes up for consideration before this Court in view of the pleadings/report used by the respective parties and submissions made by the learned advocates representing the municipality, petitioners and respondent no. 6 that whether there is encroachment on the said municipal road situates at R.S. Plot No. 6670 by construction of boundary wall and whether by using cantilever encroachment has been made by the petitioners upon extension of the first floor.

In order to find out the present position this Court needs to rely upon the report filed by the concerned authority of Bankura Municipality. It appears that persistently from the year 2018 the concerned authority of Bankura municipality is contending that there is an obstruction to the aforesaid municipal road by making unauthorised construction and over and above the said municipal road encroachment has been made by extension of first floor. Such stand of the municipality is depicted from the order dated 21st May, 2018 passed by the Chairman of Bankura Municipality

which has been issued in terms of the order passed by the coordinate Bench vide order dated 8th January, 2018.

While considering the respective submissions of the parties on previous occasion this Court, was prima-facie, of the view, that the issue should be referred to the concerned authority of the municipality for initiation of proceeding under section 218 of the West Bengal Municipal Act, 1993 for taking a decision. However, on finding the decision already taken by the Municipality dated 21st May, 2018 pursuant to the order passed by the coordinate Bench dated 8th January, 2018 after granting opportunity of hearing to the parties to this writ petition this Court finds that further referring the matter to the concerned authority of Bankura Municipality for initiation of a formal proceeding under section 218 would be an idle formality. However, in order to satisfy the conscience of this Court direction was given as contained in order dated 26th June, 2023 to the municipality as well as respondent no.6 to file a report and affidavit respectively. On filing of report by the municipality on 18th July, 2023 it appears that the previous order of the municipality dated 21st May, 2018 is corroborated. Such report of the municipality dated 18th July, 2023 has been prepared on the basis of the inspection made by the Sub-Assistant Engineer on 12th July, 2023.

This Court cannot shut its eyes to the fact that an appeal was preferred being MAT 349 of 2018 before the Hon'ble Division Bench challenging the order of the coordinate Bench dated 8th

January, 2018 and the same stood dismissed on the ground of non-prosecution vide order dated 13th June, 2018.

In view of aforesaid facts this Court directs the concerned authority of Bankura Municipality to remove obstructions made by the petitioners on the municipal road falls on R.S. Plot No. 6670 as well as to demolish the extension of the first floor made by the petitioners using cantilever which is above the said municipal road within a period of eight weeks from the date of communication of this order.

It will be open to the concerned authority of the municipality to approach the concerned police authorities for extending necessary help in order to complete the demolition work. If the concerned police authorities are approached by the Bankura Municipality for providing necessary assistance in order to facilitate demolition work the police authorities are also directed to provide necessary support and assistance.

With the aforesaid direction the writ petition stands disposed of. There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)