

05.06.2023
Item No.02
Court No.6.
S. De

**M.A.T. 687 of 2023
with
I.A. No. CAN/1/2023**

**Brig. Arindam Mazumdar & Anr.
Vs
Col. (Dr.) Sunanda Majumdar & Ors.**

Mr. Saptansu Basu, Ld. Sr. Advocate,
Mr. Debajyoti Deb,
Ms. Somdyuti Parekh,
...for the appellants.

Mr. Suddhasatva Banerjee,
Mr. Ratul Das,
Mr. Pourush Bandyopadhyay,
Mr. Joydeev Medhi,
...for the respondent no.1.

Mr. Sirsanya Bandyopadhyay,
Mr. Arka Kumar Nag,
Mr. Tirthankar Dey,
...for the Bidhannagar Municipal Corporation.

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

Read order dated April 27, 2023.

The grievance of the respondent no.1 in this appeal is that the appellants herein have made unauthorized construction. In an earlier round of litigation filed by the respondent no.1 herein being WPA 3131 of 2021, a learned Single Judge had directed that the representation of the respondent no.1 herein who was the writ petitioner in the earlier writ petition, be considered by the Executive Engineer, Building Plan Department, Bidhannagar Municipal

Corporation and pass necessary order after giving opportunity of hearing to the concerned parties.

Pursuant to such direction, the Executive Engineer passed a 'reasoned order' which was communicated to the parties under cover of a letter dated November 23, 2001. The present writ petition was filed for implementation of the said order which was for demolition of the alleged unauthorized construction.

The learned Judge disposed of the writ petition by directing the implementation of the order of the Executive Engineer.

Being aggrieved, the private respondents in the writ petition have come up by way of this appeal.

Mr. Basu, learned senior advocate representing the appellants argues that the order of demolition is without jurisdiction and, therefore, a nullity since under the West Bengal Municipal Corporation Act, 2006 (in short the '2006 Act'), it is the Commissioner of the Corporation who is authorized to issue demolition order (Section 266). The second point urged by Mr. Basu is that the order which the learned Single Judge has directed to be implemented, is an unreasoned order and is a product of total non-application of mind.

Mr. Suddhasatva Banerjee, learned advocate representing the respondent no.1/writ petitioner had

on an earlier occasion drawn our attention to Section 47 of the 2006 Act, which empowers the Commissioner to delegate, by order, subject to such conditions as may be specified in the order, any of his powers and functions to any other officer or any employee of the Corporation.

We had requested Mr. Sirsanya Bandopadhyay, learned advocate representing the Corporation to ascertain as to whether there is any delegation by way of either general or special notification by the Commissioner authorizing the Executive Engineer to exercise the powers of the Commissioner under Section 266 of the 2006 Act.

Today Mr. Bandopadhyay has, on instructions, submitted that there is no such delegation, whether general or special.

Mr. Banerjee representing the respondent no.1 however submits that even if there be no delegation, the error of jurisdiction, if any, is not such as would render the order of the Executive Engineer a nullity. Mr. Banerjee says that he has other points to argue and cases to cite in support thereof.

At this juncture we suggested that the entire controversy can be put at rest if the Commissioner of the Corporation hears the parties and passes a reasoned order in accordance with law. Both Mr.

Basu and Mr. Banerjee in their usual fairness have agreed to the Court's suggestion.

Accordingly, we direct the Commissioner of the Bidhannagar Municipal Corporation to grant an opportunity of hearing to the appellants and the respondent no.1 herein and pass a reasoned order on the complaint of the respondent no.1/writ petitioner that the appellants herein have raised unauthorized construction. Needless to say, if the Commissioner finds that there is merit in the grievance of the respondent no.1/writ petitioner, appropriate order will be issued forthwith. Till a decision is taken by the Commissioner, the appellants herein shall not make any further construction. The entire exercise will be completed by the Commissioner within a period of four weeks from the date of a copy of this order being communicated to the Commissioner of the Corporation.

We make it clear that we have not entered into the merits of the dispute between the parties. The Commissioner shall take a reasoned decision in accordance with law.

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

Accordingly, MAT 687 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)