

15. 02.08.2023
Court No.6
Tanmoy Ghosh

MAT 787 of 2022

**Partha Dan
-Versus-
The State of West Bengal & Ors.**

**With
IA No: CAN/1/2023**

Mr. Mahendra Prasad Gupta, Adv.,
Mr. Dilip Kr. Saila, Adv.

...for the appellant.

Mr. Soumik Ganguli, Adv.

...for the respondent no.2/
Municipality.

Affidavit of service filed in Court today be kept with the records.

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

A judgment and order dated April 22, 2022, whereby the appellant's writ petition being WPA 10879 of 2020 was dismissed by a learned Single Judge, is the subject-matter of challenge in this appeal.

The appellant had approached the learned Single Judge with the grievance that the private respondents had made illegal construction at premises known as "Ananda Kutir", situate within the Municipal Holding Nos. 4, 104 and 241 in Kenduadihi Mahalla Ward No.5 of Bankura Municipality.

The learned Judge noted that the appellant/writ petitioner is a resident of premises no.50, Paddapukur Road, Bhawanipore, Kolkata – 700020. The learned Judge came to the conclusion that the writ petitioner, being a resident of South Kolkata, had no *locus standi* to maintain the writ petition in respect of the alleged unauthorized construction in the district of Bankura. The other point which the learned Judge noted is that the property in question is a Trust property. However, the writ petitioner has not disclosed the nature of the Trust i.e. whether it is a Public Charitable Trust or a Private Trust, etc. The learned Judge concluded that in view of such shortfalls on the part of the writ petitioner, the Court was not inclined to exercise the discretionary and equitable jurisdiction under Article 226 of the Constitution of India in favour of the writ petitioner. Hence this appeal.

We have heard learned Counsel for the parties. From the affidavit of service filed in Court today, it appears that the private respondents have received notice but they are not represented.

We find from records that a representation dated December 1, 2020, was made by the present appellant to the Chairman/Administrator, Bankura Municipality (page 38 of the stay petition). We are of the view that it may not harm anybody if such representation is decided by the Chairman of the Municipality. After all, if there is

merit in the complaint of the appellant, then the Municipality should take steps to see that any unauthorized construction raised without obtaining sanctioned plan is removed.

Accordingly, we direct the Chairman/Administrator of the Bankura Municipality, being the respondent no.2 herein, to take a reasoned decision on the appellant's representation dated December 1, 2020, 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 along with a copy of the representation dated December 1, 2020, after giving an opportunity of hearing to the appellant herein, the private respondents and any other concerned party and/or their authorized representatives. The decision so taken shall be communicated to the parties within a week from the date of the decision. Needless to say, if the respondent no.2 finds that any unauthorized construction has been made by anybody concerned, the same shall be dealt with by him, in accordance with law.

We have not gone into the merits of the case at all. The respondent no.2 shall take an informed decision, in accordance with law.

The order under appeal is accordingly set aside.

However, we make it clear that in the event any of the concerned parties including the present appellant, fails to attend the hearing before the Municipality in

spite of receipt of notice, the Chairman/Administrator will be entitled to proceed *ex parte* in the matter.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 787 of 2022 and the connected application being IA No: CAN/1/2023 are accordingly disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)