

15. 13.10.2023
Court No.6
Tanmoy Ghosh

IA No: CAN/1/2023

Arising out of

RVW 79 of 2023

In the matter of: **Gopal Chandra Naskar**

...applicant.

Kamalesh Bhattacharyya, Adv.,
Ms. Pampa Dey (Dhabal), Adv.,
Mr. Anindya Bhattacharyya, Adv.

...for the applicant/
private respondent no.9.

Mr. Subir Sanyal, Adv.,
Mr. Balai Lal Sahoo, Adv.,
Mr. Sourojit Mukherjee, Adv.

...for the appellants/
writ petitioners.

Mr. Raghunath Chakraborty, Adv.

...for the Maheshtala
Municipality.

Smt. Manju Mondal and another (writ petitioners) approached the learned Single Judge assailing an order of demolition dated September 13, 2022, issued by the Board of Administrators of the Maheshtala Municipality, directing them to demolish the construction put up by them, as according to the Municipality, there was no sanction for such construction. The learned Single Judge dismissed the writ petition.

The writ petitioners preferred an appeal being MAT 1564 of 2022. The appeal was disposed of by this Court

by a judgment and order dated April 12, 2023, with the following observations and directions:-

“Accordingly, we grant liberty to the appellants to approach the appellate forum as indicated in Section 218(3) of the West Bengal Municipal Act, 1993 within three weeks from date (May 3, 2023). If such an appeal is filed and an application for interim relief is filed within the time period indicated above, the appellate forum shall decide the issue of interim relief within four weeks from the date of receipt of the application for interim relief. For a period of eight weeks from date, there will be an unconditional stay of demolition order issued by the Municipality. If the appellants are able to obtain an interim order of stay from the appellate forum, the same shall naturally operative. In the event the appellants are unsuccessful in obtaining an interim order of stay shall automatically stand vacated after the period of eight weeks and the Municipality will be at liberty to carry out demolition of the unauthorized construction.

We further clarify that if the appellate forum rejects the present appellants’ prayer for interim relief, then for a period of a fortnight from the date of such rejection, no coercive step will be taken against the impugned construction.

Needless to say, the appellate forum shall decide the appeal in strict accordance with the principles of natural justice and in accordance with law, after affording opportunity of hearing to all concerned parties including the Municipality and the private respondents. The parties will be at liberty to rely on all documents that are part of the records in the present litigation, at the time of hearing of the statutory appeal.”

The appellants in MAT 1564 of 2022 filed an application for review of the judgment and order dated April 12, 2023, which was registered as RVW 79 of 2023. The review application was allowed on the ground that the order of demolition in question was passed by the Chairman of the Municipality and not by the Board of Councillors. Hence the order was without

jurisdiction since Section 218 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the '1993 Act') empowers the Board of Councillors to pass an order of demolition and not the Chairperson of the Municipality. Further, Section 218(3) of the 1993 Act provides for appeal from an order of the Board of Councillors and not from an order of the Chairperson of the Municipality. Accordingly, this Court, in exercise of power to review, set aside the order that was challenged in MAT 1564 of 2022. The review application was allowed with the following observations:-

“In the present case, undisputedly the demolition order was passed by the Chairman and not by the Board of Councillors. Hence, the order is non est in the eye of law and is set aside. The order under appeal is also set aside. The review application is, thus, allowed.

Learned advocate for the private respondent no.9 says that direction should be issued on the Municipality to initiate fresh proceedings against the review applicants in respect of the impugned construction. We are not inclined to pass any such direction. The Municipality is left to its wisdom to take appropriate steps in accordance with law.

In the event the Municipality initiates fresh action, the concerned Block Land and Land Reforms Officer shall extend all co-operation.”

By filing the present application, the respondent no.9 in the appeal, Sri Gopal Chandra Naskar, prays for the following order:-

“... your Lordships would be graciously be pleased to pass appropriate order by modifying the order dated 04.09.2023 in page no.2, para 3 instead of ‘Wisdom’ it can be ‘direction’ against the Appropriate Authority of the Maheshtala Municipality and shall be concluded within a certain time period’, by the Hon’ble Justice Arijit Banerjee and the Hon’ble Justice Apurba Sinha Ray in RVW 79 of 2023 (Manju Mondal

–Vs- The State of West Bengal & Ors) and/or pass such other of further order or orders as your Lordships may deem fit and proper.”

Learned Advocate for the applicant says that if the issue of initiation of fresh demolition proceeding is left to the wisdom of the Municipality as has been directed, the Municipality may never initiate such proceedings. Hence the Municipality should be directed to start fresh demolition proceedings in respect of the impugned construction raised by the appellants/writ petitioners.

Learned Advocate for the appellants/writ petitioners says that this application is not maintainable. This application has been made really for review of the order dated September 4, 2023, in the garb of a modification application. Learned Advocate relies on a decision of the Hon’ble Supreme Court in the case of ***Supertech Limited – vs. – Emerald Court Owner Resident Welfare Association and Others***, reported at ***2021 SCC Online SC 3422*** and in particular paragraphs 8 and 9 of the reported decision.

The Hon’ble Supreme Court in effect has laid down in the aforesaid decision that an application for review in the garb of an application for clarification or modification or recall, should not be entertained by the Courts.

Having heard learned Counsel for the parties, we are of the considered opinion that the prayer made in the present application cannot be allowed. That prayer

was specifically declined while this Court passed the order dated September 4, 2023. There is no reason and no ground has been made out as to why we should review such decision of ours. Hence, we do not pass any order on this application. However, needless to say, the Municipality is obliged to discharge its statutory duties under the 1993 Act in respect of any unauthorized construction that it may detect within its territorial limit, in an appropriate manner and in accordance with law.

The application being IA No: CAN/1/2023 is 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.)