

ML 86
08.06.2023
Ct. No. 15
adeb

W.P.A. 9808 of 2018

Abhishek Halder & Anr.

Vs.

Diamond Harbour Municipality & Ors.

Mr. Sukumar Ghosh

Mrs. Moumita Ghosh

...for the petitioners

Mr. Shyama Prasad Purkait

Ms. Moumita Mondal

...for the respondent nos. 2, 3 & 7

Writ petitioners have expressed their grievance by instituting present writ petition of demolition of upper part of the boundary wall at the instance of Diamond Harbour Municipality pursuant to the order dated 15th June, 2018 passed by the Chairman, Diamond Harbour Municipality.

It has been submitted on behalf of the petitioners that in terms of the relevant provisions of the West Bengal Municipal (Building) Rules, 2007 the petitioners can construct solid boundary wall upto 1.5 meters height on the road side and if its compound wall in that event the height of the solid boundary wall should not exceed 1.5 meters and the total height of the said compound wall also should not exceed 2 meters.

It has also been submitted that without following procedure as contained in the West Bengal Municipal Act, 1993 the Chairman, Diamond Harbour Municipality by issuing order dated 15th June, 2018 caused

demolition of the upper part of the boundary wall of the petitioners. Petitioners have also prayed for necessary direction since the upper part of the boundary wall is demolished to construct afresh.

Diamond Harbour Municipality is represented by learned advocate who submits that the Chairman of the Municipality had to take steps for demolition of upper part of the boundary wall pursuant to the order of Executive Magistrate, Diamond Harbour dated 14th June, 2018. It has also been submitted that Sub-Assistant Engineer of the Municipality upon notice to the parties caused inspection on 10th May, 2018 and it was reported to the Chairman of the Municipality that the height of the said boundary wall was 2 meters from the ground level at the material point of time. Inspection report of Sub-Assistant Engineer dated 11th May, 2018 is annexure R4 to the affidavit-in-opposition used on behalf of the Municipality.

This Court has considered the submissions made by the learned advocates representing the parties and perused the relevant materials available on record.

The Chairman of the Municipality by issuing order dated 15th June, 2018 unilaterally decided that the boundary wall of the petitioners was illegally constructed and gave necessary direction for demolition of the same. The provisions of West Bengal Municipal Act, 1993 prescribes certain procedure which needs to be followed

by the municipality before taking decision to demolish unauthorized construction. On consideration of the affidavits and submissions made on behalf of the parties it appears that necessary procedure has not been followed by the municipality before identifying the said boundary wall being constructed unauthorisedly. Moreover, it also appears that the decision to demolish unauthorized construction needs to be taken by the Board of Councillors not by the Chairman of the Municipality which has not been done in the present case.

However, it transpires that pursuant to the order dated 15th June, 2018 of the Chairman of the Municipality upper part of the said boundary wall has been demolished since it was found by the municipality after carrying out inspection that height of the existing compound wall was 2 meters from the ground level.

Since the upper part of the said boundary wall has already been demolished pursuant to the order dated 15th June, 2018 the relief as sought for by the petitioners cannot be granted in this writ petition. However, a word of caution is given to the Chairman as well as the officials of the municipality not to take decision to demolish unauthorized construction without following due process of law as prescribed under the West Bengal Municipal Act, 1993.

Petitioners are granted leave to apply to the Diamond Harbour Municipality for re-construction of the upper portion of the boundary wall which has already been demolished by the municipality within 3 (three) weeks from date and if such application is made the concerned authority of Diamond Harbour Municipality shall take steps in accordance with law and grant necessary permission to construct the boundary wall if same is permissible under relevant provisions of the West Bengal Municipal (Building) Rules, 2007.

The decision to be taken by the municipality shall be communicated to the petitioners within 4 (four) weeks from the date of receipt of the application of the petitioners, if made.

With the aforesaid directions, 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.)