

Item No. 5 & 7.

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

13.12.2023
Ct-24

WPA 15583 of 2023
Sri Vikash Agarwal

v.

The State of West Bengal & Ors.
with

WPA 27541 of 2023

Smt. Damayanti Keshri @ Damayanti Keshari

v.

The State of West Bengal & Ors.

Mr. Srijib Chakraborty

Mr. Subhajit Mukherjee

... for the petitioner in WPA
27541 of 2023.

Mr. Avijit Sarkar

Mr. Subhajit Chowdhury

... for the State in WPA 15583 of 2023.

Ms. Rupsha Chakraborty

... for the State.

Mr. Santanu Chatterjee

... for AMC in both the matters.

Mr. Arup Krishna Das

Mr. Sanjoy Ghosh

... for the petitioner in WPA 15583 of 2023.

Mr. Apurba Kumar Datta

Ms. Sreemoyee Mukherjee

... for the respondent no. 6 in WPA
15583 of 2023.

The matter relates to unauthorized construction
within the jurisdiction of Asansol Municipal Corporation.

Vikash Agarwal filed the writ petition alleging that
one Dipak Keshri, son of Dayamanti Keshri, was
carrying on unauthorized and illegal construction.

Prayer has been made for demolition of the unauthorized construction.

A second writ petition at the instance of Dayamanti Keshari has been filed challenging the action of the Asansol Municipal Corporation seeking quashing the order of demolition passed by the Corporation.

Vikash asserts that Dipak Keshari is the person responsible for making construction. Asansol Municipal Corporation considered the complaint filed by Vikash and upon hearing Dipak Keshari and the complainant, passed the order of demolition.

Damayanti submits that she is the owner of the subject property and she is not responsible for raising the construction. It has been submitted that the construction was existing previously.

Further case has been made out by Damayanti that Dipak, her son, does not look after her and she resides at a separate place. No notice or opportunity of hearing to deal with the unauthorized construction was served upon her. She being the owner of the subject premises ought to have been served or made aware of the demolition proceeding.

A further issue has been raised by Damayanti with regard to the jurisdiction of the officer who passed the order of demolition.

Dipak Keshari submits that he is neither responsible nor any way connected with the construction in question. Categorical submission of Dipak is that he did not raise the subject construction and he is not aware as to who constructed the same.

Learned advocate representing the Corporation has produced the hearing notice, the attendance sheet and the stop construction notice issued to Dipak.

From the documents placed before this Court by the Corporation there is nothing to suggest that any notice was ever served upon the owner of the subject premises. The person who was alleged to be responsible for raising the construction has simply washed his hands off and denied making any such construction as alleged.

For the purpose of implementing the order of demolition, the Corporation requires the person responsible to demolish the said construction. None claims responsibility for raising such construction. In such a position it will be difficult for the Corporation to demolish the same and to recover the cost of demolition from the person responsible. If the Corporation intends to recover the cost of demolition from the owner, then an opportunity of hearing ought to be given to the owner.

It is very much possible that the construction was made by the mother through the son or by the son himself without the consent of the mother, but for ends of justice one opportunity be given to the mother, Damayanti who is the recorded owner of the subject premises and the structures standing thereon.

The Court, at this stage, is not deciding upon the jurisdiction of the person who passed the order of demolition.

In view of the above, the order of demolition is directed to be kept in abeyance for a limited period of time. An opportunity be given to Damayanti to place documents in support of the construction made. In the

event, the owner fails to produce any document in support of the construction, it will be open for the Corporation to take steps in accordance with law to deal with the unauthorized construction.

The Corporation is directed to issue a notice of spot inspection upon the owner and afford reasonable opportunity of hearing to her.

A reasoned order shall be passed and communicated to all concerned.

Till a fresh decision is taken, the order of demolition is directed to be kept in abeyance.

A notice shall also be served upon the complainant, Vikash for spot inspection and also at the time of hearing.

Both the writ petitions stand disposed of.

Report filed by the Officer-in-Charge, Jamuria Police Station be retained with the records.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)