

D/L
Item No. 04
22.09.2023
KOLE

**MAT 1240 of 2023
With
IA CAN 1 of 2023
With
IA CAN 2 of 2023**

**Sri Deo Naraya Rai
-Vs.-
Raj Narayan Rai & Ors.**

Mr. Dr. Rudra Prasad Mittal,

...for the appellant.

*Mr. Kushal Chatterjee,
Mr. D. Choudhury,*

...for the respondent no. 1.

*Mr. Soumya Banerjee,
Ms. S. Banerjee,*

...for the Municipality.

In Re: CAN 2 of 2023 in MAT 1240 of 2023:

This is an application for condonation of delay of 111 days in presenting the appeal as noted by the Additional Stamp Reporter.

Causes shown being sufficient, we condone the delay.

CAN No. 2 of 2023 is, thus, allowed.

In Re: MAT 1240 of 2023 and CAN 1 of 2023:

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

A judgment and order dated February 13, 2023, whereby the writ petition of the respondent no. 1 herein, being WPA 18957 of 2022, was disposed of by a learned Single Judge, is under challenge in this appeal. The appellant was the private respondent in the writ petition.

The appellant and the writ petitioner are brothers. The writ petitioner approached the learned Single Judge complaining that the private respondent has made illegal and unauthorized construction at Premises No. 6/56 M.M. Feeder Road, Belgharia, under the jurisdiction of Kamarhati Municipality. It was stated before the learned Judge that a proceeding under Sections 218 and 220 of the West Bengal Municipal Act, 1993 had been initiated in respect of the impugned construction. However, no steps have been taken for demolition of the unauthorized construction.

Learned Advocate for the Municipality submitted that the proceedings under the 1993 Act could not be proceeded with since learned Additional District Judge, 1st Court, Barasat, North 24 Parganas on a suit filed by the writ petitioner herein against the private respondent had passed an order of *status quo* in Misc. Appeal No. 132 of 2019 which arose from interlocutory proceedings in the suit. The learned Judge, however, noted that by an order dated December 22, 2021, the learned Civil Court clarified that the Municipality not being a party to the suit, may take necessary steps in accordance with law against unlawful and illegal construction, if any, on the suit property. The learned Judge disposed of the writ petition with the following observations and directions:-

“The learned Court below appears to have clearly clarified that the order of status quo will not stand in the way of the Municipality to take steps against any unauthorized construction.”

In the present case, proceeding under Sections 218 and 220 of the West Bengal Municipal Act, 1993 is pending.

The Municipality is, accordingly, directed to proceed in accordance with law for conclusion of the aforesaid proceeding after giving reasonable opportunity of hearing to all necessary parties and by passing a final order in the matter. The Municipality shall ensure that the demolition proceeding is concluded at the earliest, but positively within a period of twelve weeks from the date of communication of this order.”

Being aggrieved, the private respondent in the writ petition has come up before us by way of this appeal.

At the outset, we notice that the private respondent did not appear before the learned Single Judge on the day the writ petition was disposed of. Learned Advocate for the appellant (private respondent in the writ petition) says that the appellant’s learned Advocate missed the list. The writ petition had been filed in August, 2022. It was taken up in February, 2023. No fresh notice was served on the private respondent or his learned Advocate. Hence, the matter should be remanded to the learned Single Judge for fresh hearing.

We have not called upon the respondents in this appeal to make submission.

We cannot accept the contention of learned Advocate for the appellant. Admittedly, service of the writ petition had been effected on the appellant. It was the duty of the appellant to keep a track of the matter. The appellant could not have expected any number of notices from the writ petitioner.

In any event, we do not find that the appellant has been really prejudiced in any manner by the impugned order. All that the learned Judge has done is that Her Ladyship has directed the Municipality to carry out the proceedings under Sections 218 and 220 of the West Bengal Municipal Act, 1993, which are pending, to its logical conclusion.

We are told that two hearings were held in such proceedings prior to *status quo* order being passed by the Civil Court and the appellant herein participated at such hearings. We clarify that the Board of Councilors which is in seisin of the proceedings under Sections 218 and 220 of the 1993 Act, shall dispose of the same, in accordance with law, by passing a reasoned order, after giving full opportunity of hearing to the appellant and the writ petitioner herein and after considering all documents that may be produced by the parties before the Board of Councilors. The Board of Councilors shall dispose of the proceedings as early as possible but definitely by the end of November, 2023.

We see no reason to interfere with the order under appeal, which is affirmed. We have not gone into the merits of the case. The Board of Councilors shall decide the proceedings pending before it independently and in accordance with law.

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

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)