

S/L 88
16.02.2023
Court. No. 12
Sourav

WPA 13087 of 2016

Tapan Kumar Ghosh
Vs.
The Burdwan Municipality & Ors.

Mr. Pinaki Ranjan Mitra

...for the petitioner.

Mr. Uday Sankar Chattopadhyay
Mr. Suman Sankar Chattopadhyay
Ms. Snigdha Saha

...for the private respondent.

Both the writ petitioner and the private respondents are represented by their respective learned advocates.

None appears on behalf of the Burdwan Municipality and/or its officials in spite of service.

The instant writ petition is now taken up for hearing.

Heard learned advocates for the petitioner and the State at length.

The present matter is now taken up for passing appropriate order.

By filing the instant writ petition under Article 226 of the Constitution of India, it has been contended by the writ petitioner that the private respondents who are his neighbours constructed a garage adjacent to the holding of his son by utilizing boundary wall of land and building of his son situated at holding no. 177/143, R. C. Das Road, Raninagar, Burdwan. It is further contended that since the private respondents had illegally made such illegal construction of a garage, repeated representations were submitted with the respondent nos. 1 to 3/Burdwan

Municipality and its officials for taking steps for demolition of the unauthorized construction. It is submitted further that since no action has been taken by the respondent nos. 1 to 3/ Burdwan Municipality and its officials, the present writ petitioner has been compelled to file the instant writ petition with a prayer for issuance of writ of mandamus upon the respondent nos. 1 to 3 to take steps for demolition of the unauthorized construction as alleged to have been made by the private respondents herein.

In course of his submission, learned advocate for the writ petitioner draws attention of this Court to the report dated 04.07.2018 as submitted by SAE, Burdwan Municipality as called for by this Court in this writ petition on 12.06.2018. It is submitted that from the said report, it would reveal categorically that the versions of the writ petitioner is not contrary to the truth.

Per contra, learned advocate for the private respondent nos. 4 and 5 draws attention of this Court to the affidavit-in-opposition as filed as against the writ petition. It is contended that it has been averred in the said affidavit-in-opposition that the allegation as made out in the writ petition is not correct. It is, however, averred that there was an old structure which was subsequently replaced and/or reconstructed in the year 2000 as per the sanctioned building plan dated 29.01.1999 as issued by the Burdwan Municipality in favour of the private respondents.

It has also been averred that in the northern side of the building of the private respondents, there exists an old

structure of the Tin shed from the boundary wall and that such structure is not creating any obstruction in any way the interest of the present writ petitioner since the same is old and temporary in nature. It is further submitted that the instant writ petition is barred under the law of limitation since cause of action for filing the instant writ petition arose long back i.e., on 11.02.2009.

On careful consideration of the entire materials as placed before this Court and after having due regard to the submission of the learned advocates for the contending parties, it appears to this Court that the report dated 04.07.2018 as submitted by SAE, Burdwan Municipality is not only relevant but also significant. For proper adjudication of the instant writ petition, this Court considers that the relevant portion of the said report dated 04.07.2018 is required to be looked into and the same is reproduced hereunder in verbatim:

“On site inspection it is found that a Tin – shed garage is existing at north side of Mr. Tapan Kumar Ghosh’s building without keeping any open space over the boundary wall, which was shown to be demolished in the plan sanctioned recently in favour of Pvt. Respondent and vide this office memo no. 159/E/VII-4 Date:-08/06/2018. The alleged garage was an old structure & temporary in nature.”

On perusal of the aforementioned portion of the said report dated 04.07.2018, vis-à-vis., the affidavit-in-opposition as filed by the private respondents, it appears to

this Court that neither the present private respondents nor the respondent nos. 1 to 3 i.e., Burdwan Municipality and its officials are disputing that there exists a Tin-shed garage adjacent to the house of the present writ petitioner. The moot question then comes up for the consideration to this Court is as to whether such Tin-shed garage was existing or has been constructed subsequently.

Being a writ court, it is practically impossible to decide such question because such question can be determined only by a competent civil court after trial on evidence.

However, from the said report, it reveals that after obtaining sanctioned building plan dated 29.01.1999 (as disclosed in Page 2 of the affidavit-in-opposition of private respondents) another sanctioned plan was obtained by the private respondents from the Burdwan Municipality under cover of Burdwan Municipality office memo no. 159/E/VII-4 dated 08.06.2018 and prior to obtaining such sanctioned plan, it was shown that the said Tin-shed garage has been demolished.

Such being the position, it appears to this Court that while obtaining sanctioned plan vide office memo no. 159/E/VII-4 dated 08.06.2018, the private respondents had given a misrepresentation of fact before the Burdwan Municipality stating that such Tin-shed garage has been demolished but in course of physical inspection, prior to submission of said report it has been found that such statement and/or declaration of the private respondents are not correct.

In considered view of this Court since the private respondents have obtained a fresh sanctioned plan vide Burdwan Municipality office memo no. 159/E/VII-4 dated 08.06.2018 disclosing that the said Tin-shed garage has been demolished, a duty is cast upon the private respondents to demolish the said Tin-shed garage prior to making application for said sanctioned plan.

In view of the discussion made hereinabove, this Court in exercise of its plenary power directs the private respondent nos. 4 and 5 to pull down the Tin-shed, which was shown to have been demolished prior to obtaining sanctioned plan dated 08.06.2018 within a month from the date of passing of this order, failing which the respondent nos. 1 to 3 with the help of local police shall pull down the said Tin-shed garage as found by them while preparing the report dated 04.07.2018 within one month thereafter and till such demolition is completed, the validity of the sanctioned plan vide office memo no. 159/E/VII-4 dated 08.06.2018 shall remain suspended.

In the event, such demolition is made by the Burdwan Municipality, the cost of such demolition shall have to be recovered from the private respondent nos. 4 and 5 and that cost shall remain as first charge on the property of the private respondents.

With the aforementioned observation, the instant writ petition being **WPA 13087 of 2016** is disposed of.

Department is directed to forward copies of this order to the Chairman, Burdwan Municipality and to the S.P.,

Purba Bardhaman for their information and doing the needful in compliance of the order as passed by this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)