

D/L
Item No. 03
20.09.2023
KOLE

**MAT 1316 of 2023
With
IA CAN 1 of 2023**

**Sri Sobhan Roy
-Vs.-
Panihati Municipality & Ors.**

*Mr. Ranjan Kali,
Mr. Sobhan Pathak,*

...for the appellant.

Mr. Soumyajit Bhattacharyya,

...for the Municipality.

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

This appeal is directed against a judgment and order dated June 12, 2023, whereby the appellant's writ petition being WPA 28684 of 2022, was dismissed by a learned Single Judge of this Court.

In an earlier round of litigation, the appellant had approached a learned Single Judge of this Court by filing WPA 7032 of 2020, complaining that his brother, the private respondent, has constructed a building on a land adjacent to the appellant's land without leaving adequate open space on the eastern portion of the property, which is in violation of the concerned Municipal Building Rules. His grievance was that his complaint with the Chairman, Panihati Municipality was not being considered. It was submitted on behalf of the Municipality that pursuant to the complaint lodged, local inspection was conducted and it was found that the impugned construction was made according to the relevant

Municipal Building Rules under the H.F.A (House For All) project which is a Central Government scheme. Learned Advocate for the writ petitioner submitted before the learned Single Judge that the enquiry/inspection should have been made in his presence so that he could have apprised the Municipality of the illegalities in the concerned construction.

The learned Judge disposed of the writ petition with the following observations and directions:-

“Under such circumstance, the Executive Engineer, Panihati Municipality is directed to make a fresh inspection of the premises no. 52, Vivekananda Sarani (169) Police Station Khardah, Kolkata 700110 and premises no. 38, Vivekananda Sarani (169) Khardah, 24 Parganas(N) Kolkata 700110, that is the disputed holdings/plots in presence of all the parties by giving 48 hours prior notice to them, in order to ascertain whether the alleged construction was done according to the rules.

The petitioner and the respondent no. 10 are at liberty to indicate to the authorities their contentions with regard to the alleged unauthorized construction on the eastern side of the land running from North to South without leaving any space.

The Executive Engineer, Panihati Municipality after causing such inspection and giving hearing to all the parties shall pass a reasoned order. Such reasoned order should be communicated to all concerned.

The entire exercise should be completed within period of eight weeks from the date of communication of this order.”

Pursuant to the said order, the Municipality through its Board of Councilors passed an order which was communicated by the Chairman of the Municipality to the parties on July 4, 2022. The order was to the effect that after

holding inspection and hearing both the parties, it was found that the impugned construction was neither illegal nor unauthorized and not in violation of the relevant building rules. It is this order that was challenged by the appellant before the learned Single Judge in the present round of litigation.

The primary complaint of the writ petitioner before the learned Judge was that although the earlier order of this Court passed in WPA 7032 of 2022 directed the Executive Engineer of the Municipality to cause inspection, give hearing to all parties and pass a reasoned order, the same was done by the Chairman and/or the Board of Councilors. This was not in consonance with the earlier order of this Court.

It was further submitted that no notice of spot inspection was issued to the writ petitioner and no opportunity of hearing was granted to him.

Learned Advocate for the Municipality denied the aforesaid allegations. He submitted that notice of spot inspection was issued to both the writ petitioner and the private respondent who were both represented at the time of inspection. Hearing was also granted to both the parties and only thereafter the order was passed by the Board of Councilors.

Learned Advocate for the Municipality also produced documents demonstrating that notice of spot inspection was issued to both the parties. Notice of further spot inspection was also issued. The notices were received by the parties and

they were duly represented at the time of spot inspection and at the time of hearing.

Having considered the inspection report, the Board of Councilors came to the conclusion that there is no unauthorized construction. There is sufficient open space between the two premises.

The learned Judge came to the conclusion that the Board of Councilors acted in a reasonable manner in deciding the objection filed by the writ petitioner. The learned Judge also observed that under the relevant law, the Board of Councilors is the appropriate authority to take a decision in the matter. After observing that the writ petitioner's allegation of unauthorized construction on the part of the private respondent remains unsubstantiated, the learned Judge disposed of the writ petition by holding that if either of the parties is aggrieved by the order of the Board of Councilors, it will be open to him to approach the competent Civil Court for declaration of his civil rights in respect of the property in question.

Being aggrieved, the writ petitioner has come before us by way of this appeal.

We have heard learned Counsel for the appellant/writ petitioner and learned Counsel for the respondent/Municipality. From the affidavit of service filed in Court today, it appears that the private respondent has been served but he is not represented.

The primary grievance of the appellant is that the Board of Councilors could not have taken upon itself the task

to decide the representation/objection of the appellant since in the earlier round of litigation, a learned Judge of this Court had directed the Executive Engineer to take a reasoned decision in the matter after local inspection and after hearing the parties. We do not see any merit in this contention of the appellant. Under Section 218 of the West Bengal Municipal Act, 1993, it is the Board of Councilors which is the competent authority to decide whether or not a particular construction is unauthorized. Although the learned Single Judge in the earlier round of litigation had directed the Executive Engineer to undertake the exercise, we are of the view that no illegality or injustice has been caused by the Board of Councilors deciding the objection of the appellant.

The appellant further says that he did not receive notice of local inspection. Learned Advocate for the Municipality has produced a bunch of documents from its records which belies such contention. Let the bunch of documents be kept with the records.

We, therefore, find that the Competent Authority, after observing the principles of natural justice and after holding requisite local inspection, has come to the conclusion that there is no unauthorized construction on the part of the private respondent. The learned Judge held that there is nothing wrong or illegal with the order of the Board of Councilors. We agree with the learned Single Judge. We are of the opinion that there is no infirmity either in the order of the Board of Councilors which was impugned before

the learned Single Judge or in the order of the learned Single Judge which is assailed before us in this appeal.

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 fail and are, accordingly, dismissed. There will be no order as to costs.

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.)