

02. 24.08.2023
Court No.6
Tanmoy Ghosh

MAT 1506 of 2023

**Tapan Mondal & Ors.
-Versus-
The State of West Bengal & Ors.**

**With
IA No: CAN/1/2023**

Mr. Kishore Dutta, Ld. Sr. Adv.,
Mr. Supriyo Kr. Roy, Adv.,
Mr. Arijit Chakraborty, Adv.,
Mr. Tamal Banerjee, Adv.,
Ms. Puja Rajbhor, Adv.

...for the appellants/
writ petitioners.

Mr. Lalit Mohan Mahata, Ld. AGP,
Mr. Rudranil De, Adv.

...for the State respondents.

Mr. Mir Anuruzzaman, Adv.

...for the Rajpur-Sonarpur
Municipality.

Mr. Alok Kumar Ghosh, Adv.,
Mr. Supratim Dhar, Adv.,
Mr. Dhananjay Nayak, Adv.,
Ms. Soma Chakraborty, Adv.,
Mr. Sourya Mukherjee, Adv.

...for the private respondents.

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

A judgment and order dated August 3, 2023, whereby the writ petition of the appellants herein, being WPA 17385 of 2023 was disposed of by a learned Single Judge of this Court, is the subject-matter of challenge in this appeal at the instance of the writ petitioners.

We are told that several rounds of litigation have taken place between the parties. For the purpose of disposing of this appeal, we need not advert to the records of the same.

In the year 2017, the respondent no.6 herein, Sri Monoj Roy, approached a learned Single Judge of this Court in the writ jurisdiction by filing W.P. No. 5061(W) of 2017, with the grievance that his representation made to the Rajpur-Sonarpur Municipality for cancelling the Building Plan sanctioned in favour of the present appellants, was not receiving the attention of the Municipality and had been kept pending. The learned Single Judge, by an order dated November 17, 2017, disposed of the writ petition with the following directions:-

“I direct the respondent-Municipality to dispose of the above representation of the petitioner by passing a reasoned order in accordance with law after giving an opportunity of hearing to the petitioner as also other persons concerned within a period of four weeks from the date of communication of this order. The respondent-Municipality is further directed to communicate its decision to all the persons concerned within two weeks thereafter.

Needless to point out that in the event steps are required to be taken on the basis of such order, the respondent-Municipality shall take such steps without further delay.”

We are surprised to find that for more than five years after that order of the High Court, no step was taken by the Municipality. We are also surprised that Monoj Roy also did not take any step. Be that as it may, a notice dated February 27, 2023 was issued by the

Municipality addressed to Sri Monoj Roy with a copy marked to one Nilima Baidya, who we are told, is the predecessor-in-interest of one of the writ petitioners, intimating that –

“In compliance with the order dated 17.11.2017 passed by the Hon’ble Justice Debasish Kar Gupta in connection with the aforesaid matter, you are requested to appear before the Board of Councillors on 28th February, 2023 at 3:30 p.m. at Jai Hind Conference Hall along with all relevant papers and document in original for consideration of your representation dated 17th November, 2016 being Annexure P-11 at page 108 of the aforesaid writ petition which prayed for cancellation of the building plan bearing No. 145/REV/CB/01/05 dated April 24, 2015.”

It appears that by a letter dated February 28, 2023, one Dilip Kumar Mondal, claiming to be the constituted attorney of Smt. Nilima Baidya, sought adjournment of the hearing before the Board of Councillors of the Municipality which was scheduled to be held on February 28, 2023 at 3:30 p.m. It further appears that such request was not granted and the hearing was held.

By a letter dated March 6, 2023, one Biman Bhattacharjee, acting on behalf of Smt. Nilima Baidya, wrote a letter to the Chairman of the Municipality. The substance of the letter was that sufficient time was not given to Nilima Baidya to prepare for the hearing and a fresh hearing should be held.

On May 31, 2023, the Chairman of the Municipality issued an order on behalf of the Board of Councillors of the Municipality. The operative portion of the said order reads as follows:-

“...Smt Nilima Baidya and her men and agents are hereby directed to remove the construction from R.S. Dag No.232, corresponding to L.R. Dag No.206, Mouza – Balia, J.L. No. – 41, P.S. – Sonarpur, District – South 24 Parganas as shown in the annexed sketch map prepared by B.L.&L.R.O. Sonarpur within four weeks from the date of receipt of this order and submit report along with photographs to that effect before the Executive Officer of the Municipality.

It is further ordered that in the event said Smt. Nilima Baidya and her men and agents fail to remove construction from at R.S. Dag No.232, corresponding to L.R. Dag No.206, Mouza – Balia, J.L. No. – 41, P.S. – Sonarpur, District – South 24 Parganas, as shown in the annexed sketch map prepared by B.L.&L.R.O. Sonarpur within the stipulated period, the Executive Officer of the Municipality is hereby requested take appropriate steps for demolition of the said un-authorized constructions which has been raised at R.S. Dag No. 230, 231 and 232, Mouza – Balia, J.L. No. - 41,P.S. – Sonarpur, District – South 24 Parganas as shown in the annexed sketch map prepared by B.L.&L.R.O. Sonarpur.

The Executive Officer of the Municipality is hereby further requested to issue “Stop Work” notice with immediate effect until further decision of the Board of Councillors of this Municipality...”

Challenging the aforesaid order, the appellants herein approached the learned Single Judge in the present round of litigation.

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

“On a perusal of the reasoned order it appears that the petitioners were represented by Sri Biman Bhattacharya, the registered power of attorney holder.

Different documents have been relied upon by the parties to show that Sri Biman Bhattacharya is the power of attorney holder of the petitioners.

The instant writ petition has been filed being affirmed by Sri Biman Bhattacharya, the same constituted attorney of the petitioners.

Prima facie, the submission of the petitioners that no notice or opportunity of hearing was given to the petitioners appears to be incorrect.

After hearing the parties at length it appears that there are several disputed questions of facts involved in the instant writ petition. The same cannot be adjudicated without taking proper evidence.

A Title Suit is pending consideration where an order of injunction is subsisting. Reference has also been made to the order dated 25th July, 2016 passed in MAT 1129 of 2016 wherein a specific submission was made that construction was not being made over any portion of plot no. 232.

The Municipality admits that plan was sanctioned in respect of plot no. 232. The plan has lapsed by now.

The order impugned is an appealable one.

The writ Court does not think it fit to exercise jurisdiction in the matter.

It will be open for the aggrieved party to approach the appropriate appellate forum for relief, if so advised.”

Being aggrieved, the writ petitioners are before us by way of this appeal.

We have heard learned Counsel for the parties at some length.

Without going into the facts at all and without touching the merits of the disputes between the parties, we are of the view that the notice of hearing that was issued by the Municipality, was unreasonable in the sense that less than 24 hours’ notice was thereby given for attending the meeting. This cannot qualify as adequate opportunity of hearing. Only on this ground we set aside the order passed by the Municipality on May 31, 2023. We are not also going into the dispute as to whether or not Biman Bhattacharya is the constituted

attorney of the appellants. All points remain open for the Municipality to consider afresh.

Learned Counsel for the Municipality says that the validity of the concerned Building Plan, of which cancellation is sought for by Monoj Roy, expired sometime in 2020. Hence, the question of cancellation of such plan does not arise.

In response, Mr. Ghosh, learned senior Counsel representing Sri Monoj Roy/respondent no.6 herein, says that the issue of cancellation may not have become irrelevant. If the Board of Councillors of the Municipality finds that ground for cancellation contemplated in Section 217 of the West Bengal Municipal Act, 1993, exists, then the plan will have to be cancelled *ab initio*. In other words, the position would be as if no Building Plan was ever sanctioned. This has relevance because if any construction was made on the basis of the said plan and today, if the plan is declared to be void *ab initio*, such construction would naturally become unauthorized.

We see some logic in the contention of Mr. Ghosh. We are of the view that the issue of cancellation of the Building Plan should be decided afresh by the Board of Councillors of the Municipality.

Since about six years or more have elapsed from the date when Monoj Roy made the representation, we grant liberty to Monoj Roy/respondent no.6 herein, to

make a fresh comprehensive representation to the Municipality within a fortnight from date with a copy to learned Advocate-on-Record for the appellants/writ petitioners. If such representation is made, the same will be decided by the Board of Councillors of the Rajpur-Sonarpur Municipality by passing a reasoned order, in accordance with law, within a period of eight weeks from the date of receipt of the representation, after affording adequate opportunity of hearing to all concerned parties. The appellants would be at liberty to file their written response to the representation of Monoj Roy/respondent no.6 herein, before the Municipality, which naturally will be considered by the Municipality while disposing of the representation of Monoj Roy/respondent no.6 herein. Depending on the decision of the Board of Councillors, further necessary action may be taken by the Municipality.

Till a decision is taken by the Municipality on the fresh representation of Monoj Roy/respondent no.6 herein, the appellants herein shall not create any third-party interest in respect of the construction in question. No construction shall be raised by the appellants herein, which is not in accordance with law.

Needless to say that the Municipality will take decision in the matter in accordance with law and in accordance with the orders of this Court which have been passed in various proceedings.

The order under challenge is modified to the above extent.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 1506 of 2023 and the connected application being IA No: CAN/1/2023 are accordingly disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)