

26.09.2023
Item No.02
Court No.6.
S. De

**M.A.T. 1647 of 2023
with
I.A. No. CAN/1/2023**

**Debasish Guha.
Vs
Debatosh Guha & Ors.**

Mr. Sudhir Bhattacharyya,
...for the appellant.

Mr. M. Ahmed, ...for the respondent no.1.

Mr. N.C. Bihari,
Mr. P.B. Bihari,
Mr. S. Ghosh,
Mr. Soumya Mukherjee,
...for the South Dum Dum Municipality.

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

This appeal is directed against a judgment and order dated August 17, 2023, whereby the writ petition of the respondent no.1 herein being WPA 20681 of 2018, was disposed of by a learned Single Judge of this Court.

It appears that in an earlier round of litigation, the present respondent no.1/writ petitioner had approached a learned Single Judge of this Court by filing W.P. No. 5523(W) of 2017, complaining that South Dum Dum Municipality is not taking steps on

the basis of the representation filed by the writ petitioner being aggrieved by unauthorized construction made by the private respondent. The writ petitioner and the private respondent are brothers and live on separate floors of the same building.

The earlier writ petition was disposed of by the learned Single Judge by a judgment and order dated November 17, 2017 with the following direction :

“After hearing the learned Advocates appearing on behalf of the parties, I direct the respondent-Municipality to dispose of the above representation of the petitioner (Annexure P-4 at page-23 of this writ application) by passing a reasoned order in accordance with law after giving an opportunity of hearing to the petitioner and the respondent No.4 or their respective representatives as also other persons concerned, if any, within a period of three 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 one week thereafter.

It is made clear 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.”

Pursuant to such order, the Board of Councillors of South Dum Dum Municipality issued notices to the parties, allowed the parties to file relevant documents and held hearings. Thereafter, the Board of Councillors passed an order dated May 31, 2018 in compliance of the order passed in the earlier writ petition. The operative portion of the order passed by the Board of Councillors reads as follows :

“On 31.05.2018 both the parties were called for hearing before the Board of Councillors, vide memo no.40/PWD/XVI/SDM dated 24.05.2018. Today both the parties were present and after having their signature on the attendance sheet. The respondent, Sri Debasish Guha submits that petitioner Sri Debatosh Guha, herein represent as his brother. That temporary construction over the 2nd

floor roof of the building has been constructed for their aged father to have sun-bath for taking care of health.

Considering the representation dated 09.02.2017 of the petitioner, Sri Debatosh Guha, and the inspection report of this office, the Board of Councillors unanimously decided that as the construction was not made with brick and R.C.C. structure, that's why it can not be treated as permanent structure which does not attract the question of unauthorised construction."

In the present round of litigation, the respondent no.1 in this appeal approached the learned Single Judge challenging the order of the Board of Councillors referred to above.

The learned Judge in the impugned order observed that the Chairman of the Municipality has not assigned valid reasons as to why the temporary structure in question should be allowed to be retained. As regards the point of maintainability of the writ petition raised by the Municipality on the ground of availability of a statutory appeal under Section 218(3) of the West Bengal Municipal Act, 1993, the learned Judge negated such point by holding that the order impugned in the writ petition does not stem from a

proceeding under Section 218 but has been passed in terms of the order of the learned Single Judge passed in the earlier writ petition. Ultimately, the learned Judge set aside the order dated May 31, 2018 passed by the Board of Councillors and directed the Municipality to remove the structure in question within six weeks from the date of communication of the order.

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

We have heard learned counsel for the parties. We agree with the learned Single Judge to the extent that the order of the Board of Councillors of the Municipality is not a reasoned order in the sense that the relevant provisions of the statute i.e. the West Bengal Municipal Act, 1993, have not been discussed at all. Section 2(3) of the 1993 Act defines a “Building”. Therefore, any structure which comes within the scope of that definition can be raised only upon obtaining prior permission from the Municipality. Let the Board of Councillors of the Municipality re-visit the issue and take a fresh reasoned decision, in accordance with law on the point as to whether or not unauthorized construction has been made by the appellant herein as alleged by the respondent no.1/writ petitioner. The Board of Councillors shall afford sufficient opportunity of

hearing to the appellant and the writ petitioner herein and shall consider such documents as the parties may present before the Board of Councillors. Let this exercise be completed within 12 weeks from the date of communication of this order by the parties to the Chairman of the Board of Councillors.

We clarify that we have not gone into the merits of the dispute between the parties. The Board of Councillors will take an informed decision in accordance with law which will necessarily include Section 218 of the West Bengal Municipal Act, 1993, without being influenced by any observation in this order or in the order of the learned Single Judge which is impugned in this appeal.

Needless to say that if the Municipality finds that the structure in question comes within the definition of “Building” as defined by Section 2(3) of the 1993 Act, and if the structure has been raised without obtaining due sanction from the Municipality, appropriate steps shall be taken by the Municipality in accordance with law.

The order under appeal is set aside.

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

MAT 1647 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)