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17.08.2023
agm/d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 20681 of 2018

**Debatosh Guha
-versus
South Dum Dum Municipality & Ors.**

**Mr. Raghunath Chakraborty,
Mr. M. Ahmed.
...For the Petitioner.**

**Mrs. Papiya Banerjee.
...For the South Dum Dum
Municipality.**

**Mr. Sudhir Bhattacharjee.
...For the Respondent No.4.**

In the writ petition, inter alia, the order dated 31st May, 2018 is under challenge.

The Chairman, South Dum Dum Municipality (hereinafter referred to as 'Municipality') while considering the nature of structure which has been erected by the respondent no. 4 has failed to assign cogent reasons as to why temporary construction made with steel frame and tin shed at the roof of the second floor measuring about 257 sq.ft. at P-780, Lake Town, Block-A, Kolkata-700089 can be permitted to be retained.

On perusal of the impugned order dated 31st May, 2018, it appears that the Chairman found since the construction was not made with brick and R.C.C. structure, therefore, it cannot be treated as permanent

structure and as such, the said structure was not to be treated as unauthorised construction.

Mr. Raghunath Chakraborty, learned advocate representing the petitioner upon placing reliance on Section 205 of the West Bengal Municipal Act, 1993 submits that for erecting such structure, plan is required to be sanctioned by the Municipality but in the present case no such plan was sanctioned.

It has also been contended on behalf of the petitioner in reference to Section 2(3) of the West Bengal Municipal Act, 1993 that the construction in question does not come under the description of tent, samiyana or tarpaulin shelter, therefore, the construction in question needs to be considered as part of building.

There is an additional point taken on behalf of the petitioner that one of the considerations for permitting the respondent no. 4 to retain the temporary structure in question was for the benefit of father of the petitioner as well as the respondent no. 4 since the petitioner and respondent no. 4 are brothers, and father has passed away in the meantime.

The learned advocate representing the Municipality submits that the writ petition is not maintainable in view of Section 218 (3) of the said Act of 1993 which provides appeal provision against the order passed by the Municipality under Section 218 (1). Therefore, it has been submitted that the appropriate remedy which is open to the petitioner is to prefer an appeal without instituting the present writ petition.

Respondent no. 4 is also represented by the learned advocate who has made submission in order to defend the order of the Chairman of the Municipality dated 31st May, 2018.

Having considered the submissions made on behalf of the parties and on perusal of the impugned order dated 31st May, 2018, it appears that the Chairman of the Municipality has not assigned valid reasons as to why the temporary structure at the aforesaid premises to be retained.

The learned advocate for the Municipality has taken a point of maintainability of the writ petition on the ground of existence of an appeal provisions under Section 218 (3) but in the present case the decision of the Chairman dated 31st May, 2018 has been taken pursuant to the order of the co-ordinate Bench dated 17th November, 2017 passed in a writ petition being W.P.A 5523 of 2017 wherein the Municipality was directed to dispose of the representation of the petitioner. On perusal of the said order dated 17th November, 2017 it does not appear that the Municipality was directed to initiate the formal proceeding under Section 218.

Since the order dated 31st May, 2018 is not an order on culmination of proceeding under Section 218, the appeal provision as contained under Section 218 (3) ought not to be construed as a bar in entertaining the present writ petition.

Apart from taking the point of maintainability of the writ petition, no submission has been made with regard to the validity of the impugned order dated 31st May, 2018 which goes to show that the decision of the

Chairman of the Municipality to permit the respondent no. 4 to retain the temporary structure is impermissible.

Nothing is shown which would lead this Court to form an opinion that this temporary structure can be erected and retained without sanctioned plan.

In view of the aforesaid discussion, it appears that the order dated 31st May, 2018 is not tenable and the same stands set aside.

The concerned authority of the Municipality is directed to remove the aforesaid structure within six weeks from the date of communication of this order.

Accordingly, the writ petition stands disposed of.

There will be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Saugata Bhattacharyya, J.)