

D/L. 49 & 50.
February 13, 2023
MNS

CPAN 974 of 2022
In
WPA No. 5291 of 2022

Amjed Ali Mir
Vs.
Mr. Dulal Das and another

Mr. Bibek Chatterjee,
Mr. Tanmoy Chakraborty

...for the petitioner

Mr. Raghunath Chakraborty,
Md. Apzal Ansari

...for the alleged contemnors.

Supplementary affidavit filed in court today be kept on record.

Learned counsel for the petitioner submits that although a notice has been given for demolition by the alleged contemnors to the recalcitrant parties, the said notice is not in consonance with the letter and, as such, the same does not amount to compliance of the order of this court dated April 27, 2022 passed in WPA 5291 of 2022.

Learned counsel appearing for the alleged contemnors submits that due notice has been given for demolition of the property to the alleged violators. However, the veracity of such notice and/or whether there was any inaction in that regard on the part of the Municipality to the

effect that the due provisions of law were not properly complied with, the adjudication of the same is beyond the scope of the contempt proceeding. In the event the petitioner is aggrieved, it is submitted, he can at best raise an appropriate challenge before a competent court. Moreover, it is argued on behalf of the alleged contemnors that it is *de hors* the *locus standi* of the present petitioner to challenge any notice of demolition given to third parties.

Upon a perusal of the order dated April 27, 2022, it is seen that the writ petition, bearing WPA No. 5291 of 2022, was disposed of by directing the respondent nos. 2 and 3 therein to ensure that the representations of the petitioner with regard to the alleged unauthorised constructions made by respondent nos. 7 to 9 were looked into by the Board of Councillors and, in the event the Board was satisfied that the erection of the building fell within any of the tests as stipulated in Section 218(1) of the West Bengal Municipal Act, 1993, to take appropriate action in consonance with the said Section for proceeding with demolition or alteration of the unauthorised constructions.

In the present case, the perusal of the records and upon hearing learned counsel for the parties, it is clear that due steps have been taken by the alleged contemnors in consonance with the said order dated April 27, 2022. However, inasmuch as the legality or veracity of such action is concerned, it is entirely beyond the scope of the present

contempt application to decide or adjudicate on such issues on merits.

Hence, there is no further scope of keeping the contempt application pending.

Accordingly, CPAN 974 of 2022 is disposed of by granting liberty to the petitioner to challenge the action taken by the alleged contemnors with regard to the demolition and/or any subsequent violation of law by the alleged contemnors before an appropriate forum in an appropriately constituted challenge in that regard.

It is made clear that if such a challenge is preferred, it will be decided on its own merits without being influenced in any manner by any of the observations made herein.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)