

43. 04.12.2023
bd. Ct.15

WPA 21625 of 2014

Rekha Bose & Ors.

-vs-

The State of West Bengal & Ors.

Ms. Pampa De Dhabal ... for the petitioners.

Mr. Barin Banerjee

Ms. Sima Chakraborty ... for KMC

By presenting this writ petition petitioners have questioned the order of the Building Tribunal passed in connection with Building Tribunal Appeal No.68 of 2013 dated 25th June, 2014 whereby the Tribunal upon formulating two issues remanded the Demolition Case to the Special Officer (Building) and at the same time liberty was granted to the parties in the appeal to adduce additional evidence, if required, in support of their respective cases. The Special Officer (Building), vide order dated 25th June, 2014 of the Tribunal, was directed to decide two issues formulated in the order of the Tribunal and shall return the records containing evidence to the Tribunal with the finding of the Special Officer (Building) assigning reasons in support of such finding, within three months from the date of receipt of the record by the Special Officer (Building).

It appears on hearing the learned advocates representing the petitioners and KMC that no decision could be taken by the Special Officer (Building) pursuant to the order dated 25th June, 2014 since the order of the Building Tribunal dated 25th June, 2014 is under challenge in the present

writ petition and subsistence of an order of stay which was granted by a coordinate Bench on this writ petition on 5th August, 2014.

It has been submitted by Ms. De (Dhabal), learned advocate, representing the petitioners that in connection with the unauthorised constructions carried out at premises No. E/6, Katju Nagar, Borough-X, under Ward No. 93 within the jurisdiction of KMC complaint was lodged by the petitioners and said complaint ultimately travelled upto the Building Tribunal. In the midst order was passed by the Special Officer (Building) dated 25th March, 2013 whereby some portion of the aforesaid premises was directed to be demolished and other portion was allowed to be retained by the person responsible being the private respondent herein.

After the said order was passed by the Special Officer (Building) the same was challenged by the respondent no. 7 by instituting a writ petition being WPA 24767 of 2012. However, it appears from the order dated 16th January, 2014 that the said challenge failed which triggered filing of an intra-court appeal before the Hon'ble Division Bench and by passing order dated 6th February, 2014 the Appellate Court directed the Building Tribunal to decide the appeal pending before it without giving any effect to the order passed by the coordinate Bench on 16th January, 2014. Ultimately, the Building Tribunal passed an order on 25th June, 2014 which is the subject matter of challenge in the present writ petition.

This Court has heard the learned advocates

representing the petitioners and KMC but the reason for challenging the order dated 25th June, 2014 has not been explained before this Court in order to substantiate the case made out by the petitioners in the present writ petition. On perusal of the order of the Building Tribunal it appears the jurisdiction of the Special Officer (Building) was found to be under cloud since it was urged before the Tribunal that the then Special Officer (Building) was not a permanent employee of KMC. It was also recorded in the order of the Building Tribunal that the aforesaid premises in question was divided into two parts so far as the alleged unauthorised constructions are concerned - “recently unauthorised” and “not recently unauthorised”.

According to the Tribunal, the Special Officer (Building) came to the finding that ‘not recently unauthorised’ portion was constructed in the year 1970 but in support of such finding there was no corroboration based on documentary evidence.

On these aforesaid two issues as delineated above the Building Tribunal thought it fit to remand the matter to the Special Officer (Building) for reconsideration and for taking fresh decision after granting opportunity to the parties to lead evidence.

In view of the order passed by the Building Tribunal dated 25th June, 2014 this Court does not find any ground to interfere with the said order.

Accordingly, the writ petition stands disposed of by directing the Special Officer

(Building) to take decision strictly in accordance with the order of the Building Tribunal dated 25th June, 2014 passed in Building Tribunal Appeal No. 68 of 2013 within a period of sixteen weeks from the date of communication of this order after granting opportunity of hearing to the parties to the proceeding which was initiated before the Special Officer (Building) and to pass order accordingly.

Since respondent no. 7 is not represented today, before commencement of hearing by the Special Officer (Building) pursuant to this order passed by this Court due notice shall be served upon respondent no. 7 thereby granting him opportunity to make deliberation before the said authority. Similarly, notice shall also be served upon the petitioners and other parties to the proceeding.

Affidavit-in-opposition filed on behalf of the KMC today is taken on record.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)