

30. 04.09.2023
bd. Ct.15

W.P.A. 23635 of 2017

Chhabi Ghosh

-vs-

The State of West Bengal & Ors.

Mr. Pampa Dey Dhabal ... for the petitioner

Mr. Dwarika Nath Mukherjee

Mr. Manik Lal De ... for the State.

Mr. M. Ahmed ... for the Municipality.

Mr. Gopal Chandra Ghosh

Mr. Sayan Sengupta ... for respondent no.7

In the writ petition the resolution of the Board of Councillors dated 31st July, 2017 whereby respondent no. 7 has been permitted to construct first floor over the ground floor is under question in the present writ petition.

Learned advocate representing the petitioner submits that from the relevant part of the resolution dated 31st July, 2017 it is apparent that by removing tin shed over the ground floor respondent no. 7 made RCC construction and in connection with such construction he admitted that same was made without obtaining sanctioned plan. Respondent no. 7 tendered apology before the Board of Councillors and prayed for according sanctioned plan for construction of first floor. Learned advocate for the petitioner questions the resolution dated 31st July, 2017 of Mahestala Municipality whereby sanctioned plan has been granted for construction of first floor over and above the ground floor where roof of the ground floor has been converted into

pucca construction without obtaining any permission from municipality.

Respondent no. 7 is represented by learned advocate who submits that the order dated 31st July, 2017 is an appealable order therefore writ petition is not maintainable. It has further been submitted that for constructing first floor necessary permission has been accorded by the municipality vide resolution dated 31st July, 2017 and it has also been submitted that the petitioner has also made unauthorised constructions and the same needs to be taken into consideration.

Having considered the submissions made on behalf of respective parties and on perusal of the impugned resolution dated 31st July, 2017 of the municipality it appears that there is an admission on the part of the respondent no. 7 that he made pucca constructions at the roof of the ground floor of his premises and subsequently has been permitted to extend the building by making constructions over the said roof for completing first floor.

When the roof of the ground floor has not been constructed as per the sanctioned plan it is improper on the part of the municipality to permit respondent no. 7 to construct first floor over and above the said roof of the ground floor. Therefore it appears that the very basis of according permission in favour of the respondent no. 7 for construction of first floor is erroneous and accordingly part of resolution dated 31st July, 2017 whereby

respondent no. 7 has been permitted to construct the first floor stands set aside.

This Court is aware of the grounds taken on behalf of respondent no. 7 that the resolution dated 31st July, 2017 is an appealable order but that does not make hindrance so far as this Court is concerned to exercise its jurisdiction when it is found that the resolution dated 31st July, 2017 of the Municipality is palpably illegal and untenable. Moreover the decision as contained in the resolution dated 31st July, 2017 has been taken by the Board of Councillors pursuant to the order passed by a coordinate Bench on a writ petition being WPA14869 of 2017 and the order was passed on 1st June, 2017.

Since this Court has already set aside relevant part of the resolution dated 31st July, 2017 the concerned authority of Mahestala Municipality is directed to initiate a proceeding under section 218 of the West Bengal Municipal Act, 1993 within a period of two weeks from the date of communication of this order and shall conclude the said proceeding within twelve weeks thereafter after granting opportunity of hearing to the petitioner as well as respondent no. 7.

The reasoned order shall be passed on conclusion of the aforesaid proceeding and the same shall be communicated to the parties within one week thereafter.

With the aforesaid direction the writ petition

stands disposed of.

There shall be no order as to costs.

Affidavit-in-opposition filed on behalf of respondent no. 7 is taken on record.

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

(Saugata Bhattacharyya, J.)