

10.10.2023
Item No.4.
Court No.6.
AB

**M.A.T. 1996 of 2023
With
IA CAN 1 of 2023**

**Smt. Rekha Barnwal & Anr.
Vs
Asansol Municipal Corporation & Others**

Mr. Saktinath Mukherjee, Sr. Adv,
Mr. Kishore Datta, Sr. Adv,
Mr. Supratim Dhar,
Mr. Kunal Ganguly,
Mr. Tirupati Mukherjee ...for the Appellants.

Mr. Sounak Bhattacharya,
Mr. Sounak Mondal
...for the Asansol Municipal Corporation.

The appellants are aggrieved by an order dated September 27, 2023, passed by a learned Single Judge of this Court in WPA 13250 of 2023, being a writ petition filed by the appellants. The order is interim in nature in the sense that the writ petition is still pending before the learned Single Judge.

It appears that sanction of a building plan was obtained by the appellants for raising a construction within the territorial limits of Asansol Municipal Corporation. The area of the construction, which was ultimately made, far exceeded the sanctioned area. The sanctioned area was 17282.60 sq. ft. The area of the actual construction is 1,33,941.91 sq. ft. i.e. almost eight times the sanctioned area.

It appears that the Asansol Municipal Corporation raised a demand of approximately Rs.20 Crores on the appellants as a precondition for permitting the appellants to retain the unauthorized construction. This was challenged by the appellants before the learned Single Judge. The relevant portion of the impugned order that the learned Single Judge passed reads as follows:

“As an interim measure, the petitioners are directed to pay the additional charges in accordance with the rate which was prevailing from October 17, 2015 which is prior to the fixing up of the charges in the meeting of the Board of Councillors held on April 19, 2023.

The Municipality is directed to intimate the petitioners the exact figure in accordance with the aforesaid calculation by September 30, 2023. The petitioner shall pay the said amount by October 18, 2023. The said payment shall be made without prejudice to the rights and contentions of either of the parties.

Let the matter appear in the list on November 22, 2023.

In the event, the petitioners fail to deposit the amount as calculated in terms of the direction passed hereinabove, then it will be open for the Corporation to take steps against the unauthorized construction in accordance with law.”

Pursuant to the order of the learned Single Judge, the Corporation has intimated to the appellants that calculated at the old rate, approximately a sum of Rs.13,39,41,910/- is payable by the appellants. The

appellants are aggrieved by the order of the learned Single Judge and are, therefore, before us.

We have heard learned Counsel for the parties at length. The additional charges/penalty that the Corporation has sought to levy on the appellants are on the strength of certain resolutions of the Board of Councillors of the Corporation. A serious dispute has been raised by Mr. Shaktinath Mukherjee and Mr. Kishore Datta, learned Senior Advocates representing the appellants as regards the authority of the Board of Councillors to resolve to impose penalty on an errant builder, who makes construction without obtaining prior sanction. They say that without the sanction of law, no such resolution can be passed.

Mr. Bhattacharya, learned Advocate representing the Corporation draws our attention to Section 302 of the West Bengal Municipal Corporation Act, 2006 and submits that the Commissioner of the Corporation has been authorized by the Statute to impose such conditions as he may deem fit for permitting construction of a building or structure. Hence, according to learned Advocate, the Board of Councillors is within the limits of law in taking a decision to levy additional charges, by whatever name it may be called, for permitting retention of unauthorized structures.

Since the writ petition is pending before the learned Single Judge and the learned Judge is yet to

decide the same after hearing the parties fully, we are not inclined to enter into the merits of the disputes between the parties. We find that the learned Single Judge has granted interim protection to the appellants upon the appellants depositing the amount intimated by the Corporation to them, calculated at the old rate. That amount comes to approximately Rs.13 Crores. However, that calculation is also based on certain resolutions of the Board of Councillors of the Corporation. Learned Advocates for the appellants question the legality of such resolutions. We are told that the validity of such resolutions is also under challenge in a separate writ petition being WPA 23335 of 2023 pending before this Court.

Accordingly, we are of the view that Rs.13 Crores is perhaps too high an amount to be deposited immediately as a precondition for interim protection. We modify the order of the learned Single Judge to the extent that the interim protection granted by the learned Single Judge will continue subject to the appellants depositing Rs.2 Crores with the Corporation by the end of this month. In the event such deposit is not made by the end of this month, the interim protection shall stand withdrawn and the Corporation will be at liberty to take steps in accordance with law.

We have not applied our mind to the merits of the case. We leave all questions open for the learned

Single Judge to decide in the manner Her Ladyship may deem fit and proper.

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

MAT No.1996 of 2023 is, accordingly, disposed of along with IA CAN 1 of 2023.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)