

Item No. 29
04.12.2023
Court. No. 19
GB

C.O. 3747 of 2023

Natakrihna Parua
Vs.
Soumen Patra & Ors.

*Mr. Somnath Roy Chowdhury,
Ms. Arpita Chowdhury*

...for the Petitioner.

This Court finds that there is no scope for interference with the order dated September 25, 2023, passed in Misc. Appeal No.01 of 2019 by the Civil Judge (Junior Division), 1st Court, Tamluk, Purba Medinipur. The said appeal arose out of an order of demolition passed by the Tamralipta municipality. On the points of law raised by the person responsible for the alleged construction, the learned Civil Court was of the opinion that the municipality should file a report along with an explanation as to whether the order of demolition had been passed at all.

Mr. Roy Chowdhury, learned advocate for the petitioner/complainant before the municipality submits that the appeal is being dragged and the unauthorized construction is being protected not only by the municipality, but also due to the long pendency of the misc. appeal.

Mr. Roy Chowdhury submits that the order impugned should be set aside and this Court should direct demolition in view of the fact that the proceeding before the court has come to a standstill due to non-appearance of the Chairman of the municipality.

Mr. Roy Chowdhury submits that the board of councillors had delegated its power to the Chairman in terms of the provisions of law and the attention of the Court has been drawn to page 35 of the revisional application, which indicates that the order of demolition was counter-signed by the person responsible for such construction. Thus, the question of disputing whether the order of such nature was passed or not, would not arise.

According to Mr. Roy Chowdhury, the learned court below erred in directing the Chairman of the municipality to explain whether any order of demolition had been passed or not. It is pointed out that the municipality is not appearing in the proceeding which had made it impossible for the learned court below to dispose of the said appeal. Mr. Roy Chowdhury submits that various documents would indicate that the opposite party was aware of such proceeding.

In my view, the factual aspects are to be decided by the learned court below. Whether a demolition order had been passed and whether the order was passed in accordance with law, are to be decided in the appeal.

The order impugned does not call for any interference. The learned court had directed the municipality to produce the relevant information, in order to enable the court to decide the appeal on its merits.

However, the proceeding should not be dragged only on account of non-appearance of the municipality. If they do not appear and file the documents, the petitioner may pray before the court to draw adverse inference from their conduct and the

matter should be disposed of on the basis of the records and submissions of other contesting parties.

The certified copy of the order of demolition can be produced by the petitioner before the learned court below, in case the municipal authorities fail to do so.

The misc. appeal shall be disposed of within a period of three months from the date of communication of this order, by the learned Civil Judge, without being influenced by any observations made hereinabove.

Accordingly, the revisional application is disposed of.

However, there shall be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)