

D/L
Item No. 06
19.10.2023
KOLE

**MAT 2063 of 2023
With
IA CAN 1 of 2023**

**Raj Kumar Das
-Vs.-
Chhabi Ghosh & Ors.**

*Mr. K. M. Hossain,
Mr. J. Hossain,
Mr. R. Mondal,*

...for the appellant.

*Mr. Dwarika Nath Mukherjee,
Mr. M Lal De,*

...for the State.

*Mr. R. N. Chakraborty,
Mr. M. Ahmed,*

...for the Municipality.

*Mrs. Pampa Dey Dhabal,
Mr. Mr. Nikhil Kr. Gupta,*

...for the respondent. 1.

On the undertaking of learned Advocate on record for the appellant to file affidavit of service in course of the day, the appeal and the connected application are taken up for hearing together.

A judgment and order dated September 4, 2023, whereby the writ petition of the respondent no. 1 herein, being WPA 23635 of 2017 was disposed of by a learned Judge of this Court, is assailed in this appeal by the private respondent in the writ petition. The private respondent herein being the writ petitioner had made a representation to the Maheshtala Municipality complaining that the appellant who is her neighbour, has made unauthorized construction. With the grievance that the Municipality was not considering such representation, the writ petitioner herein had approached the writ court in an earlier round of

litigation by filing WP No. 14869 (W) of 2017. Such writ petition was disposed of by a learned Single Judge of this Court directing “the Board of Councilors, Maheshtala Municipality to hold a hearing in which both the petitioner and the private respondent no. 7 shall present their record of documents. The Board of Councilors shall pass a reasoned order which shall be communicated to the parties.”

Pursuant to such order the Board of Councilors after hearing both the parties, passed an order dated August 31, 2017, holding that the appellant herein had not made any unauthorized construction and the construction made was in accordance with the applicable rules.

Challenging such order of the Board of Councilors, the private respondent in this appeal approached the learned Single Judge in the present round of litigation. By the judgment and order impugned in this appeal, the learned Judge set aside the order of the Board of Councilors dated August 31, 2017 (wrongly recorded as July 31, 2017 – in fact the hearing had been held on July 31, 2017) and has directed the Municipality to initiate a proceeding under Section 218 of the West Bengal Municipal Act, 1993.

Being aggrieved, the private respondent in the writ petition has come up by way of this appeal.

Learned Advocate for the appellant says that the relevant building plan was sanctioned in his favour in 2016. The plan has not been set aside or cancelled by any competent authority. The learned Judge ought not to have made observations to the effect that the appellant has made

unauthorized construction. In view of such observations, it would be an useless exercise to hold proceedings under Section 218 of the 1993 Act.

Learned Advocate for the petitioner says that she leaves it to the court to pass any order but the court should not stop proceedings under Section 218 of the 1993 Act.

We agree with learned Advocate for the appellant to the extent that if the learned Judge was minded to direct the Municipality to initiate a demolition case under Section 218 of the 1993 Act, His Lordship ought not to have made any observation, which would tend to indicate that the appellant has raised any unauthorized construction.

Accordingly, we expunge any observation of the learned Single Judge from the judgment and order impugned relating to the legality or otherwise of the construction made by the appellant. The Municipality shall initiate and carry to its logical conclusion proceedings under Section 218 of the 1993 Act, in accordance with law, observing the principles of natural justice, without being influenced by any observation of the learned Judge in the judgment and order impugned in this appeal. The proceedings under Section 218 of the 1993 Act shall be initiated and completed by the Municipality within twelve weeks from the date of receipt of a copy of this order from the parties.

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

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)