

05-09-2023
Court No.2
Sh/25.

**In The High Court At Calcutta
Jalpaiguri Circuit Bench**

W.P.A. 1524 of 2023

Manoj Kumar Gupta.

Vs.

The State of West Bengal & Ors.

Mr. Anindya Basu,
Dr. Navin Barik,
Ms. Esha Acharya.

For the Petitioner.

Mr. Suresh Kumar Mitruka,
Mr. Aayush Mitruka,
Mr. Mantosh Bhowmick.

..For the respondent no.5.

Mr. Deborshi Dhar.

For the Municipal Corpn.

Pursuant to the leave granted by this Court on September 1, 2023 an affidavit affirmed by the respondent no.3 on September 4, 2023 is filed today Court is taken on record.

Affidavit-in-opposition filed by the respondent no.5 affirmed on August 31, 2023 has already been taken on record on September 1, 2023.

The petitioner claims to be a owner and occupier in respect of a portion of the building situated at Panitanki More, Sevok Road, P.O. & P.S. Siliguri, District; Darjeeling as would be evident from the **Certificate of Mutation at Page 87 to the writ petition.**

The respondent no.5 is the complainant who raised allegation of unauthorized and illegal

construction at the building and sought for the necessary redressal to be carried by the respondent corporation authority in accordance with law.

The issue has a chequered history of writ litigation. Ultimately under an order dated **March 30, 2023 Annexure P-7 at page 153 to the writ petition**, passed by a co-ordinate Bench an inspection by technical team was carried out in the manner and mode as directed in the said order.

The complainants/respondent no.5 had carried out three independent appeals being MAT 60, MAT 61 and MAT 62 all of 2023. The Hon'ble Division Bench by its judgment and order dated April 26, 2023 was pleased to modify the said order of the co-ordinate Bench and directed that one Mr. Purnjoy Konar (in short Mr. Konar) shall be a part of the inspection team and all further inspections are to be held by a team of which Mr. Konar shall be a member. The date of inspection was fixed on May 2, 2023 by the Hon'ble Division Bench. Pursuant to the direction of the Hon'ble Division Bench a notice **dated April 28, 2023 at page 187 to the writ petition** was issued for holding the inspection on May 2, 2023. The inspection was held. A **field report was prepared on May 2, 2023 at page 192** to the writ petition. Another notice for second inspection dated May 22, 2023 was issued at page 179 to the writ petition. Pursuant thereto no further inspection was held.

Ultimately, in compliance of the time bound programme scheduled by the co-ordinate Bench in its said order dated March 30, 2023 a final inspection

report dated June 12, 2023 was prepared at **page 180 to 182 to the writ petition.** The petitioner submitted an exception to the said joint inspection report through its letter dated June 21, 2023, Annexure P-11 at page 205 to the writ petition. The said objection has not yet been considered as alleged by the petitioner.

Mr. Anindya Basu, learned counsel appearing for the petitioner submits that the notice for inspection dated April 28, 2023 as referred to above was not served upon the writ petitioner. Referring to page 191 of the writ petition he submits that this was the Attendance Sheet prepared during the inspection of the premises which shows that the present owners were not present during the said inspection. This allegation is disputed by the complainant/respondent no.5.

Mr. Deborshi Dhar, learned counsel appearing for the respondent no.3 submits that the corporation has also received various objections from other existing owners and occupiers of the premises against the said inspection report.

The prayer in the writ petition shows that the petitioner has prayed for setting aside and/or quashing of the said inspection report dated May 31, 2023 against which they have submitted an objection dated **June 21, 2023 at page 205 to the writ petition.**

Mr. Aayush Mitruka, learned counsel appearing for the complainant, respondent no.5 referring to **annexure P-12 at page 211** to the writ petition

submits that on June 21, 2023 the respondent no.3 has issued a hearing notice in respect of a hearing proceeding under Section 287 of the West Bengal Municipal Corporation Act, 2006 (for short the said 2006 Act). He submits that in view of issuance of the said notice, the subsequent notice at page 216 dated July 11, 2023 at page 316 of the affidavit-in-opposition filed by the respondent no.5 dated July 11, 2023 and the notice dated August 16, 2023, **at page 321** to the said affidavit, the respondent no.3 has accepted the inspection report dated May 2, 2023, circulated on June 12, 2023 and the objection raised by the petitioner dated June 21, 2023 stands overruled and the respondent no.3 has abandoned the proposal for subsequent inspection after the letter dated **May 22, 2023 at page 179 to the writ petition.** He submits that the case made out in the writ petition is only on the exception to the report filed by the petitioner.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that the mandate of the Division Bench dated April 26, 2023 is still in force. Following the direction of the co-ordinate Bench dated March 30, 2023 an inspection has already been carried out on May 2, 2023. The petitioner through its letter dated June 21, 2023 raised a substantive objection against the said joint inspection report. There is no material on record to suggest that the respondent no.3 before whom the objection was raised on June 21, 2023 was considered. The ultimate result on the issue in the litigation would lead to demolition of the unauthorized construction, if it is found, at the subject premises. To

come to such a conclusion, this Court is of the view that, the owners and occupiers are required to be heard on their respective objections already submitted by them in accordance with law.

The Corporation with their respective building cell comprised of experts on the subject inspected the premises to ascertain whether there is any unauthorized or illegal construction or not. The experts must be granted adequate opportunity to apply their mind and it is not the domain of the writ Court to restrict their application of mind. More so, considering such an important issue involved in this writ petition with regard to the question of demolition.

In view of the foregoing reasons and discussions, this Court is of the firm view that, the petitioner must be heard on its objection dated June 21, 2023 **Annexure P-11 at page 205 to the writ petition** by the respondent no. 3 strictly in accordance with law after granting him an adequate opportunity of hearing.

Considering the submissions made by Mr. Deborshi Dhar, learned counsel appearing for the corporation that several other owners and occupiers have also submitted their objections against the said joint inspection report, this Court finds it appropriate and fit that all such objections shall have to be heard by the respondent no.3 after issuing adequate notice of hearing on all the occupiers and owners.

This Court is also of the view that, while hearing such objections the respondent no.5, the complainant, shall also be present and be granted an opportunity of

hearing by the respondent no.3. Accordingly, the following directions are made:

- a) The respondent no.3 shall issue at least 15 days prior notice to the petitioner and all other existing owners and occupiers of the premises fixing the date, time and place of the hearing.
- b) Such a notice to avoid all further complication of service of notice shall also be published in a local Bengali Newspaper with a wide circulation as also in an English Newspaper with a wide local circulation of the choice of the respondent no.3. Such notice shall also be pasted at the conspicuous spaces at the premises.
- c) In an identical manner notice mentioning its name shall also be served upon the respondent no.5 inviting to participate in the hearing.
- d) This notice shall also mention that in the event any owners or occupiers of the premises wish to file its objection, who has not yet filed, the same may be filed within a specific date to be fixed by the respondent no.3
- e) After granting an opportunity of hearing to the participant objectors the respondent no.3 shall pass its reasoned order on the issue.
- f) To the wisdom of the respondent no.3, if any, inspection is required to take place in the midst of the hearing, respondent no.3 shall cause the same upon prior notice to the owners and occupiers participating in the

hearing and also by affixing necessary notice for inspection at the conspicuous spaces at the said premises.

The entire exercise as directed above shall be carried out and completed by the respondent no.3 positively within a period of twelve weeks from the date of communication of this order and the respondent no.3 then shall communicate its reasoned order to all the participants in the hearing and other interested parties within a further period of three weeks from the dated of the said reasoned order to be passed.

It is made clear that, in the event during the hearing the respondent no.3 thinks it fit to carry out any further inspection at the premises by its technical team, he shall be free to do so with its technical team strictly following the mandate of the Hon'ble Division Bench dated April 26, 2023.

In addition to the reasoned order being communicated by the respondent no.3 to the participants in the hearing and any other interested parties as directed above, the gist of the same shall also be published in the same Newspapers as directed above, by the respondent no.3.

The petitioner shall also serve copy of this order upon Mr. Konar forthwith to enable him to make himself available, if necessary, following the mandate of the Hon'ble Division Bench.

Till the time the reasoned order is communicated to the parties and the gist of it is published in the Newspaper, as directed above, the respondents shall not take any coercive step in the matter without the specific leave of this Court.

On the above terms and with the above observations this writ petition being **WPA 1524 of 2023 stands disposed of** without any order as to costs.

(ANIRUDDHA ROY,J.)