

D/L
Item No. 04
15.01.2024
KOLE

**MAT 7 of 2024
With
IA CAN 1 of 2024**

**Smt. Geeti Majumder
-Vs.-
The State of West Bengal & Ors.**

<i>Mr. Supriyo Chattopadhyay,</i>	<i>...for the appellant.</i>
<i>Mr. Sirsanya Bandyopadhyay,</i>	
<i>Mr. Tirthankar Dey,</i>	
<i>Mr. Arka Kr. Nag,</i>	<i>...for the BMC.</i>
<i>Mr. Amal Kr. Sen,</i>	
<i>Mr. Lal Mohan Basu,</i>	<i>...for the State.</i>
<i>Mr. Ashim Kumar Routh,</i>	
<i>Mr. S. Barik,</i>	<i>...for the private respondent.</i>

Affidavit of service filed in Court today be kept with the records.

By consent of the parties, the appeal and the connected application are taken up for hearing together.

A judgment and order dated December 4, 2023, whereby the writ petition of the appellant herein being WPA 26702 of 2023 was disposed of by a learned Single Judge of this Court, is the subject matter of challenge in this appeal.

It appears that pursuant to a complaint lodged by the private respondent herein, proceedings were drawn up by the Commissioner of Bidhannagar Municipal Corporation (in short 'BMC'). The complaint was to the effect that the appellant herein was making unauthorized construction on a plot of land next to the complainant's plot of land, in a

manner so as to obstruct the ingress to and egress from the property of the complainant.

The Commissioner passed an order on November 2, 2023, after granting opportunity of hearing to both the parties. The appellant's representative participated in such hearing. The private respondent did not attend such hearing.

During the hearing, the representative of the appellant produced a photocopy of a building plan dated May 6, 2011 permitting construction of a G+3 storeyed building. It was submitted that the erstwhile Rajarhat-Gopalpur Municipality which subsequently merged with the Bidhannagar Municipality and then the BMC came into existence, had sanctioned such building plan. The Commissioner recorded that the BMC has verified the building plan and it has been found that the plan is not genuine. Having so concluded, the Commissioner passed the following order:-

“Under the facts and circumstances, it appears that an unauthorized construction in the subject premises have been erected by the owner of the building as per inspection conducted by the officials of this Corporation.

It also appears that erection of structure/building without any sanctioned building plan and without prior permission from the Corporation is a gross violation of the provisions of the West Bengal Municipal Act-2006 as well as West Bengal Municipal Building Rules-2007.

In view of the above the undersigned directs the owner of the building to demolish the unauthorized constructions erected by her without any valid sanctioned building plan

within 4 (four) weeks from the receipt of this order failing which this Corporation will be compelled to take appropriate steps without any further reference as per provisions of relevant rules and acts to demolish the unauthorized constructions and recover the expenses of such demolition from the private respondent as per provisions of West Bengal Municipal Corporation Act-2006.”

Challenging the aforesaid order of the Commissioner of BMC, the appellant approached the learned Single Judge. The learned Judge disposed of the writ petition with the following observations and directions:-

“Upon hearing all the parties it appears that relying on a plan allegedly issued by the Rajarhat-Gopalpur Municipality in the year 2011-12, construction could not have been made at present.

For the purpose of making recent construction, permission of the Bidhannagar Municipal Corporation ought to have been obtained. The Bidhannagar Municipal Corporation has inspected all records and have concluded that the sanctioned plan is not genuine. In the absence of a proper sanctioned plan, it will not be open for the petitioner to raise any construction.

The Bidhannagar Municipal Corporation shall take all necessary steps in accordance with law to deal with any construction that has been made without a valid sanctioned plan or relying upon a plan which is found to be not genuine.”

Being aggrieved, the writ petitioner is before us by way of this appeal.

The appellant produced a document purporting to be a sanctioned building plan issued by the Rajarhat-Gopalpur Municipality. She says that the seal of the Municipality

appears on such plan. Construction was made on the basis of such plan. Completion certificate was issued by the Municipality in respect of such construction. Hence, the finding of the Commissioner of BMC that the plan is not a genuine plan is completely arbitrary and incorrect.

We have also heard learned Counsel for BMC, the State and the private respondent. The private respondent says that even today the appellant is continuing with the illegal construction. He further says that even assuming for the sake of argument that a building plan was sanctioned in favour of the appellant in 2011-12, on the basis of such plan, the appellant cannot make any construction today. These submissions are strongly disputed by the appellant.

Whether or not the sanctioned building plan issued by the Municipality is a genuine document, whether or not it is a forged document, is a question which the Writ Court is ill-equipped to decide. However, we are of the opinion that the finding of the Commissioner of BMC that the concerned plan is not genuine, is a cryptic one, without being supported by sufficient reasons. Hence, we deem it appropriate to remand the matter back to the Commissioner of BMC to consider the matter afresh and pass a fresh reasoned order in accordance with law.

Accordingly, we set aside the Commissioner's order dated November 2, 2023 and remand the matter back to the Commissioner of BMC for being considered afresh in accordance with law and come to a detail reasoned finding as regards the genuineness or otherwise of the concerned

building plan said to have been sanctioned by the Municipality. The fresh decision will be taken by the Commissioner after affording opportunity of hearing to the appellant and the private respondent herein. This exercise will be completed within a period of six weeks from the date of communication of this order to the Commissioner by the appellant and the private respondent. Till a fresh decision is taken by the Commissioner, the appellant is restrained from making any further construction at the site in question.

For the aforesaid purpose, let the appellant file a comprehensive application before the Commissioner of BMC annexing thereto authentic photocopies of all the documents including the building plans that she wishes to rely upon at the hearing before the Commissioner. A copy of such application shall be supplied to the private respondent. At the hearing to be granted by the Commissioner, the appellant shall produce the originals of all the documents that she wishes to rely upon and photocopies whereof she annexes to the application/representation to be filed before the Commissioner.

We make it clear that we have not gone into the merits of the disputes between the parties. The Commissioner shall take a fresh decision in accordance law. We clarify that in the event the Commissioner is again of the opinion that the building plan in question is not a genuine document, he will indicate in the order with sufficient clarity as to why he has formed such opinion. The order under appeal is set aside.

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.)