

15.01.2024
Item no.3.
Court No.6.
AB

M.A.T. 79 of 2024
With
IA CAN 1 of 2024
IA CAN 2 of 2024

Sri Aman Kumar Singh & Others
Vs
Sri Swapan Kumar Debnath & Others

Mr. Saptangshu Basu, Sr. Adv,
Mr. Ayan Banerjee,
Ms. Debasree Dhamali,
Ms. Riya Ghoshfor the Appellants.

Mr. Sudarsan Halderfor the Writ Petitioner/
Respondent No.1.

Mr. Subhabrata Das,
Mr. Mrinal Kanti Das,
Mr. Kartick Kr. Goyal...for the North Barrackpur
Municipality.

In re : CAN 2 of 2024

The applicants pray for leave to prefer appeal against an order dated December 12, 2023, passed by a learned Judge of this Court in a writ petition filed by the respondent no.1 herein, being WPA No.21912 of 2023.

By the impugned order, the learned Judge has directed implementation of an order for demolition of a building, which, according to the North Barrackpore Municipality, is an unauthorized structure.

The applicants say that they are owners of flats in the said building. They will be vitally affected if the order of the learned Single Judge is carried out. Hence, they pray for leave to challenge such order by

way of an appeal. They were not parties to the writ petition wherein the order sought to be assailed herein was passed.

Having heard learned Counsel for the applicants, we are of the view that they have sufficient standing to challenge the order sought to be assailed.

Accordingly, this application is allowed.

In re : MAT 79 of 2024, CAN 1 of 2024

The respondent nos.1 and 8 herein are brothers (Swapn and Arabinda respectively). In the year 2016, Swapn had approached a learned Judge of this Court by filing WPA No.5486 of 2016 alleging that Arabinda had made illegal construction on a plot of land next to Swapn's plot of land. That application was disposed of by the learned Judge by a judgment and order dated August 2, 2022. Swapn was granted liberty to file a complaint before the Municipality under Section 218 of the West Bengal Municipal Act, 1993 (in short "the 1993 Act").

Swapn filed such complaint. The Municipality passed an order dated January 2, 2023, for demolition of the top floor of the building measuring about 124.59 sq. meter, which was completely unauthorized and the deviated portions in respect of the other floors.

In the present round of litigation, Swapn approached the learned Single Judge for implementation of the demolition order passed by the Municipality.

The learned Judge noted that Arabinda had written a letter dated April 24, 2023, to the Chairman of the Municipality saying that he had no objection if the illegal portions of the building in question were demolished. In view of such stand of Arabinda, the learned Single Judge directed the Municipality to carry out the demolition order. Hence, this appeal by three persons claiming to be owners of flats in the building in question.

Photocopy of a conveyance in favour of the 1st appellant has been annexed to the stay application. Photocopy of another conveyance in favour of the 3rd appellant has been produced in Court today. No conveyance in favour of the 2nd appellant has been produced before us.

Learned Advocate for the appellants says that all that the appellants want is that they should be given an opportunity of hearing. This is contemplated by Section 218 of the 1993 Act.

Learned Advocate for the Municipality says that the entire third floor is illegal. The appellants may have purchased the concerned flats of which the Municipality has no knowledge. No application was ever made for mutation of such flats in favour of the purchasers. The appellants were at all the material times aware that the construction in question is unauthorized.

Learned Advocate representing Swapam (writ petitioner) says that the entire building is unauthorized. He produces Minutes of a Special Meeting of the Board of Councillors of the Municipality held on December 23, 2022, the relevant portion whereof reads as follows:

*“The Members present in the meeting discussed the report of the inspection made by the Public Works Department with respect to the complaint dated 10.08.2022 of Sri Swapan Kumar Debnath where it has been stated that Sri Arabinda Debnath....the Respondent constructed a three storied building in his land bearing holding no.616(N), at ward no.12. Sri Arabinda Debnath is having two storied sanctioned building plan vide No.238 of 2013-2014 dt. 09.10.2013. **There are deviation from sanctioned plan in respect of covered area at ground floor, mezzanine floor and first floor. The covered area measuring 124.59 sqm. 3rd floor constructed by Sri Arabinda Debnath....the Respondent is completely illegal and unauthorized.***

The Members present therefore, unanimously decided that the proportion of the building deviated from the sanctioned building plan vide No.238 of 2013-2014 dt. 09.10.2013 would be demolished following the contemplation made under the provisions of Section 218”.

We prima facie find that the 1st and 3rd appellants have purchased flats in the concerned building. They, therefore, became owners of such flats and undivided proportionate share in the land on which the building stands. The flats that the 1st and 3rd appellants purchased may have been constructed illegally without obtaining sanctioned plan from the Municipality. However, still the 1st and 3rd appellants are the owners of the flats in question. Title to a

property cannot be in vacuum. The ownership of the 1st and 3rd appellants in respect of the concerned flats prima facie appears to be there although the concerned flats may have been constructed unauthorizedly.

Section 218 of the 1993 Act requires the Board of Councillors of a Municipality to afford an opportunity of hearing to the 'owners' of the impugned structure before taking coercive steps against such construction. Therefore, in our view, an opportunity of hearing should be granted to the 1st and 3rd appellants by the Municipality before any action is taken by the Municipality, which may affect the said appellants adversely.

It is not in dispute that the said appellants are in actual physical possession of flats in the building in question. We are not, for a moment, blaming the Municipality for not sending notice to the appellants since the names of the appellants are not in the records of the Municipality, they not having applied for mutation at any point of time.

Another reason why we think that the appellants should be granted an opportunity of hearing, is that no evidence of any proceeding under Section 218 of the 1993 Act could be produced before us. The Statute requires proceedings to be initiated by the Municipality as indicated in Section 218 of the 1993 Act. Without duly conducted demolition proceedings,

no property, however illegally constructed, can be brought down.

Accordingly, without adjudging whether or not the building in question or portion thereof is illegal or has been constructed in deviation from the sanctioned plan, we directed the Board of Councillors of the Municipality to initiate proceedings under Section 218 of the 1993 Act in respect of the building in question and complete the same within a period of six weeks from date. Needless to say, the 1st and 3rd appellants herein and the writ petitioners (Swapan as well as Arabinda) will be granted opportunity of hearing by the Municipality in the proceedings to be initiated under Section 218 of the 1993 Act. Till a decision is taken by the Municipality in the proposed proceedings, no coercive action be taken by it in respect of the construction in question.

The order to be passed by the Municipality shall naturally supersede the earlier demolition order and will hold fort. We make it clear that we are not, for a moment, suggesting that the construction in question is legal. It is for the Municipality to take a final decision in the matter in accordance with law observing the principles of natural justice.

We further make it clear that if the Municipality finds that the impugned construction is unauthorized, it shall forthwith take steps to implement such

decision, subject to such decision being interdicted by a competent forum.

The order under appeal is set aside.

Learned Advocate for the writ petitioner says that no useful purpose will be served by keeping the writ petition pending. Accordingly, the appeal and the connected application are disposed of along with the writ petition being WPA 21912 of 2023, treating the same as on day's list.

Since no affidavit has been called for, the allegations made in the stay petition are deemed not to be admitted by the respondents.

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.)