

WPA 1105 of 2024
Durga Prasad Bhakat
Vs.
State of West Bengal & Ors.

Mr. Uttiya Ray,
Mr. Arnab Mandal

...for the Petitioner

Mr. Subhasis Bandopadhyay

...for the Municipality

Mr. Soumik Ganguly

...for Respondent Nos. 5 to 7

Mr. Ziaul Haque

...for the State

The writ petitioner challenges an order dated August 3, 2023, passed by Burdwan Municipality in compliance with an order dated April 19, 2023, passed in WPA 7323 of 2023 (Durga Prasad Bhagat Vs. The State of West Bengal & Ors.).

It is the grievance of the petitioner that predecessor in interest of respondent no. 5 to 7 was a licensee of father of the petitioner in respect of the relevant property.

To evict the predecessor in interest of respondent nos. 5 to 7, the petitioner filed an eviction suit before the Court of Civil Judge (Jr. Division), 2nd Court, Burdwan.

The predecessor in interest of respondent nos. 5 to 7 constructed an unauthorised structure on the said land. Pursuant to the order passed by a Co-ordinate Bench of this Court, the Municipality by an order dated August 3, 2023, after hearing all concerned declined to demolish the unauthorised construction.

Learned advocate appearing for the petitioner submits that the order dated August 3, 2023, cannot be sustained in the eye of law. He submits that the predecessor in interest of respondent nos. 5 to 7 erected an unauthorised structure measuring about 375 square feet. Such a construction comes within the meaning of 'building' under Section 2 (3) of West Bengal Municipal Act, 1993 and 'erection of building' as defined under Section 197 (1) of the said Act.

It has further been submitted by the learned advocate appearing for the petitioner that the plaint and the commissioner's report filed in connection with the suit, make it clear that, though initially, a temporary construction existed, the predecessor in interest of respondent nos. 5 to 7, during the pendency of the suit has raised the permanent structure. Therefore, Burdwan Municipality ought to have demolished the relevant construction as it is both unauthorised and illegal.

Learned advocate appearing for the petitioner has relied upon a judgment reported at (2013) 5 SCC 336 (Dipak Kumar Mukherjee Vs. Kolkata Municipal Corporation & Ors.), in support of his submission.

It has also been submitted by the learned advocate appearing for the petitioner that the nature and scope of the pending suit between the parties and the present writ petition are entirely different. In the pending suit, issue

revolves around the right, title and interest of the petitioner and the respondent nos. 5 to 7 in relation to the property, while in this writ petition, the sole issue is whether the construction in question for liable to be demolished for violating the West Bengal Municipal Act, 1993.

In support of his submission, he has placed reliance upon a judgment reported at AIR 1988 CAL 370 (Rampuriah Brothers Pvt. Ltd. Vs. Calcutta Municipal Corporation & Ors.).

It has further been submitted that respondent nos. 5 to 7 cannot claim any equity disregarding the law. Since the unauthorised construction violates the provisions of West Bengal Municipal Act, 1993, the respondent nos. 5 to 7 cannot claim any equity to retain the unauthorised construction.

Learned advocate appearing for the petitioner has placed reliance upon a judgment reported in 2008 (4) CHN (CAL) 89 (State of West Bengal & Ors. Vs. Mostafizor Rahaman & Ors.).

The Municipality, on the other hand, submits that the construction is temporary and does not require a sanction from the Municipality. He has drawn attention of this Court to the order of the Municipality dated August 3, 2023, to suggest that the relevant construction is a 'chala room' with an asbestos shed over a brick wall, covering an

area of 375 square feet.

Learned advocate appearing on behalf of respondent nos. 5 to 7 has drawn attention of this Court to the written statement filed in the suit to argue that respondent nos. 5 to 7 have a tenancy right over the relevant property. He further submits that no permanent construction has been made by their predecessor in interest. Therefore, this Court should not interfere with the order dated August 3, 2023, passed by Burdwan Municipality.

The stance of respondent nos. 5 to 7 before this Court makes it clear that the facts involved in this writ petition are disputed. Not only is the nature of right over the premises is disputed but the nature of the alleged unauthorised construction has also been disputed before this Court.

The scope of adjudication in this writ petition is limited. An order of demolition passed by a Municipality is appealable under Section 218 (3) of the West Bengal Municipal Act, 1993, but when the Municipality decides not to demolish a construction, no appeal lies. Therefore, when an order of Municipality refusing to demolish a construction is challenged invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the scope of judicial review will be narrower compared to appeal. Unless, it is manifestly perverse or suffers from jurisdictional error, a writ court may not interfere with an

order of Municipality to retain a construction.

In the present case, I am not inclined to interfere with the factual findings of the Municipality in arriving at a decision to retain the construction. The relevant part of the order dated August 3, 2023, is quoted below:

“That the matter was heard in presence of all concerned and asked both of them to furnish their versions with supporting documents with 3 days but no documents submitted till date. That the report of the Engineering Dept was read out in presence of all the members wherein it was reported that a chala room with asbestos shed over a brick wall found covering an area of 375 sq ft during spot inspection and the nature of construction is temporary and it was reported that the Pvt. Respondent stated that he was allowed to stay there to look after the land of the petitioner a long ago. It also appears from the available records that a T.S being No. 146/2017 is pending between the parties. That the land records and municipal tax receipt stands in the name of petitioner.

In view of the above it is unanimously resolved by the Board of Councillors that no steps are necessary at this stage as the chala was restructured recently and civil suit filed by the petitioner before the Civil Judge, Jr. Division, 2nd Court, Burdwan, so the matter is sub-judice for the present for which the Chairman, Burdwan Municipality is hereby authorized to pass an order in this connection if the said chala comes within the purview of unauthorized construction then necessary steps will be taken up subject to the availability of the Ld. Civile courts order. The matter is disposed of and information be given to all concerned for taking action thereto.”

The findings of the Municipality are based on a report filed by its engineering department.

I also find substance in the submission of the learned advocate appearing for respondent nos. 5 to 7 that if the construction is demolished at this stage, the same will in effect evict respondent nos. 5 to 7 from the property even before a decision in the title suit.

I, however, make it clear that the construction carried out shall not create any equitable right in favour of respondent nos. 5 to 7. If the petitioner obtains a decree from the competent Civil Court, the same will supersede any claims of respondent nos. 5 to 7 related to the construction.

With the aforesaid observations, **WPA 1105 of 2024** is disposed of.

Urgent certified *website* copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)