

03.04.2024
Item No.10
Court No.6.
S. De

**M.A.T. 268 of 2024
With
I.A. No. CAN/3/2024**

**Nilima Poddar.
Vs
The State of West Bengal & Ors.**

Mr. Ashim Kumar Routh,
Ms. Anindita Ayddy,
Mr. S. Barik, ...for the appellant.

Mr. A.K. Nag,
Mr. S. Banerjee,
Mr. T. Dey, ...for the B.M.C.

Mr. Somnath Gangopadhyay,
...for the respondent no.11
Mr. Suman Ghosh,
Ms. Munmun Tewary, ...for the State.

A police report filed by learned advocate for the
State be kept with the records.

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

A judgment and order dated June 16, 2023,
whereby a writ petition of the respondent no.11 herein
being WPA 5001 of 2023, was disposed of by a learned
Judge of this Court, is under challenge in this appeal
at the instance of Smt. Nilima Poddar who was not a
party to the writ petition and who claims to be the

developer of the building in question. We have granted leave to Smt. Poddar to file this appeal.

The respondent no.11 herein is the neighbour of one Kalyani Basak, the respondent no. 10 in this appeal. The respondent no.11, Anjana Saha, noticed that a building was being constructed on Kalyani's land. On enquiry, Anjana found that there was no sanctioned plan for the building. Anjana made a representation to the Bidhannagar Municipal Corporation (in short 'BMC'). The Commissioner of BMC initiated appropriate proceedings and finally passed an order dated December 7, 2022, directing demolition of the five storeyed building which had been constructed apparently without any sanctioned building plan from the BMC.

With the grievance that the demolition order was not being executed, Anjana approached the learned Single Judge. It was submitted on behalf of the BMC that police assistance had been sought for. As soon as such assistance is given, demolition activity will begin. The learned Judge noted from the affidavit-of-service that the writ petition had been sought to be served on the private respondent in the writ petition i.e. Kalyani, but the same was returned with the postal endorsement 'unserved' and 'left'.

The learned Judge disposed of the writ petition with the following observations :

“From the submissions made on behalf of both the parties and upon perusal of the materials on record, it appears that the order of demolition is yet to be implemented. Police assistance has been sought for by the Corporation.

The Corporation is directed to follow up the matter with the police authority so that necessary police assistance may be received and the demolition conducted at the earliest.

The Corporation is directed to conclude the demolition proceeding at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order.

The Officer-in-Charge, Baguiati Police Station is directed to render all necessary help and assistance to the men and agents of the Bidhannagar Municipal Corporation at the time of executing the order of demolition.

It will be open for the Officer-in-Charge of Baguiati Police Station to seek for additional police force from the Deputy Commissioner of Police (HQ), Bidhannagar Police Commissionerate on

the date and time of executing the order of demolition.”

Being aggrieved, Nilima has come up by way of this appeal.

Learned advocate for Nilima says that the writ petitioner i.e. Anjana, deliberately did not implead Nilima as a party respondent in the writ petition. In any event, it was the duty of BMC to ascertain at whose instance the building came up. Nilima, as the developer of the property, should have been granted an opportunity of hearing by the Commissioner of BMC prior to passing demolition order.

To our query as to whether or not there is a sanctioned plan in favour of Nilima or Kalyani, learned advocate for the appellant produced a xerox copy of a plan bearing serial no.732/10/11, described as ‘provisionally sanctioned’, signed apparently by the Chairman of Rajarhat-Gopalpur Municipality on a date which appears to be 20.12.2016. She says that the impugned construction is backed by the said building plan sanctioned by the then Municipality.

Mr. Nag, learned advocate for BMC points out that Rajarhat-Gopalpur Municipality ceased to exist in June 2015 when it merged with the Bidhan Nagar Municipality to form BMC. He further says that completion certificate in respect of the impugned structure has also not been produced before this

Court. He says that the said building plan appears to be a manufactured one. Since the appellant has produced photocopy of what appears to be a building plan, we are of the view that an opportunity of hearing should be granted to her by the Commissioner, BMC and then further necessary action may be taken by BMC.

Mr. Nag also points out that notices of hearing before the Commissioner, BMC, were issued to the land owner being Kalyani and the writ petitioner on April 13, 2023, October 28, 2022, November 4, 2022 and November 7, 2022. The notice of demolition was also served on the landowners and all occupiers of the building in question on February 2, 2024.

Having considered the facts and circumstances of the case, we direct the Commissioner, BMC to grant an opportunity of hearing to the appellant and the writ petitioner or their authorized representatives and pass a reasoned order in accordance with law. Let this exercise be completed within ten days from date (April 13, 2024).

Copies of this order shall be served by the appellant on each of the flat owners who are occupying the flats in the building in question within four days from date (April 7, 2024) and a report to that effect, in the form of notarized affidavit be filed before the Commissioner, BMC, within five days from date (April

8, 2024). Within a week thereafter (April 15, 2024) or so soon thereafter as is possible, the Commissioner, BMC shall hold a hearing after issuing notices of hearing to all the flat owners in the concerned building as also to the writ petitioner herein intimating the date of hearing. At the hearing, the appellant will produce the original of the building plan, copy whereof has been produced before us. The Commissioner will take an informed decision in the matter and direct further necessary action. Till the Commissioner passes an order as aforesaid, no coercive action be taken in respect of the building in question.

We clarify that we are not binding the hands of the Commissioner, BMC, to pass a fresh order in any particular manner. The Commissioner shall pass an order in accordance with law. If the Commissioner finds no reason to change the earlier order of demolition, the earlier order shall be immediately given full effect.

MAT 268 of 2024 is disposed of along with the application being I.A. No. CAN 3 of 2024.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(M.V. Muralidaran, J.)