

08.04.2024
Item No.09
Court No.6.
S. De

F.M.A. 445 of 2024
With
I.A. No. CAN/1/2024

Paula Kausiki Basak.
Vs
The Bidhannagar Municipal Corporation & Ors.

Mr. Somnath Roy Chowdhury,
Ms. Arpita Chowdhury,
...for the petitioner/appellant.
Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag,
Mr. Tirthankar Dey, ...for the B.M.C.

Mr. Saptansu Basu, Ld. Sr. Adv.,
Mr. Kunal Gupta,
Mr. Binoy Kr. Jain,
Mr. Piyush Jain,
...for the respondent nos. 6&7.

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

A judgment and order dated December 13, 2023, whereby the appellant's writ petition was disposed of by a learned Judge of this Court, is the subject matter of challenge in this appeal filed by the writ petitioner.

It appears that the writ petitioner made a representation to the Bidhannagar Municipal Corporation (in short 'BMC'), complaining of alleged unauthorized construction made by the private respondents on a neighbouring plot of land. With the

grievance that such representation was not being considered by BMC, the writ petitioner approached the learned Single Judge.

The learned Judge noted that apart from unauthorized construction, there were other issues including whether or not the private respondents were legally running a guest house from the premises in question having detrimental effect on the environment. However such issues are subject matters of other legal proceedings. The learned Judge restricted consideration on the present writ petition with regard to a tin structure complained of by the writ petitioner. The learned Judge disposed of the writ petition with the following observations and directions :

“An inspection report has been produced before this Court by the learned advocate representing the Bidhannagar Municipal Corporation. It appears therefrom that the disputed structure was not taken into consideration at the time of inspection.

The Corporation is directed to conduct a spot inspection upon prior notice to both the parties. The spot inspection report shall be circulated and thereafter, an opportunity of hearing shall be provided to the parties to produce documents in support of the construction made.

If it ultimately transpires that the construction is impermissible in law, it will be open for the Corporation to take remedial steps.

The Corporation shall take steps in the matter at the earliest, but positively within a period of twelve weeks from the date of communication of this order.”

Being aggrieved, the writ petitioner has come up by way of this appeal.

Learned advocate for the appellant says that it is not only the tin structure regarding which complaint was lodged with BMC. He refers to the representation dated July 5, 2023, made by the writ petitioner to BMC and points out that grievance had been ventilated regarding other structures as well. The appellant only seeks a clarification that BMC should consider his representation in its entirety, inspect the entire premises and if necessary, take appropriate action in accordance with law.

Mr. Basu, learned senior advocate representing the private respondents says that there is no unauthorized construction in the premises in question. After due inspection, BMC granted occupancy certificate dated June 14, 2023, in favour of the private respondents. The writ petition has been filed only to harass the private respondents.

We have considered the rival contentions of the parties. The appellant, rightly or wrongly, has made a representation to BMC. BMC shall consider such representation and take a decision thereon after local inspection. We merely clarify that such inspection shall not only be in respect of the tin structure but in respect of other portions mentioned in the representation. The inspection shall be done upon prior notice to the appellant and the private respondents who will be entitled to be present at the time of inspection. A hearing shall also be granted thereafter by the competent authority in BMC to both the appellant and the private respondents or their authorized representatives. If BMC finds any unauthorized construction, it shall take necessary steps in accordance with law.

The entire exercise will be completed within twelve weeks from the date of communication of this order by the appellant to the respondent no.2 being the Commissioner, BMC.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondents.

FMA 445 of 2024 is disposed of along with the application being I.A. No. CAN 1 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.)

(Apurba Sinha Ray, J.)