

11.03.2024
Item No.7.
Court No.6.
AB

**F.M.A. 322 of 2024
With
CAN 1 of 2024**

**Tapas Kumar Shit & Anr.
Vs
The State of West Bengal & Others**

Mr. Amit Baran Dash,
Ms. Ankana Sarkarfor the Appellants.

Ms. Santi Das,
Mr. R. D. Bhowmick.....for the Respondent No.8.

Mr. Nabhajit Prasad Basu,
Mr. Chandan Kr. Mondalfor the State.

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

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

A judgment and order dated January 15, 2024, whereby the writ petition of the respondent no.8 herein, being WPA 25260 of 2023, was disposed of by a learned Judge of this Court, is the subject matter of challenge in this appeal, filed at the instance of the private respondents in the writ petition i.e. Tapas Kumar Shit and his wife, Madhumita Shit.

It appears that a representation dated January 28, 2021, was made by the present writ petitioner to the Contain Municipality alleging illegal construction on two plots of land situate next to each other at the

instance of Madhumita. The fact appears to be that Madhumita has constructed a building on one plot and Tapas has constructed another building on the next plot.

With the grievance that his representation was not receiving the attention of the Municipality, the present writ petitioner, Prasanta Kumar Maity, approached a learned Judge of this Court by filing WPA 10311 of 2022. That writ petition was disposed of by an order dated September 5, 2022 by directing the concerned Authorities to dispose of Prasanta's representation in accordance with law observing the principles of natural justice, by passing a reasoned order, within three months from the date of communication of the order.

Pursuant to the said order, the Board of Councillors of the Municipality initiated proceedings under Section 218(1) of the West Bengal Municipal Act, 1993. Ultimately, by an order dated August 1, 2023, the Municipality held that there was unauthorized construction at the instance of Madhumita and she was directed to demolish the same within 30 days from the date of receipt of the order. In default, the Municipality was to demolish such unauthorized construction.

The Municipality did not pass any order in respect of the construction made by Tapas as, according to the Chairman of the Board of Councillors,

the construction raised by Tapas was not the subject matter of the writ petition on which the order dated September 5, 2022, was passed.

Madhumita and Tapas have preferred a statutory appeal under Section 218(3) of the West Bengal Municipal Act, 1993, before the Civil Judge (Junior Division), 1st Court, Contai.

However, since despite noticing that Tapas had also made unauthorized construction, the Municipality did not pass any order in respect of such illegal construction, Prasanta Kumar Maity once again approached a learned Single Judge of this Court in the present round of litigation. The learned Judge disposed of the writ petition with the following observations and directions:

“The Municipality ought to have taken proper steps against any unauthorized construction that has been detected and ought not to have compelled a party to file writ petition seeking relief. The stand of the Municipality in observing that as no order has been passed by the Court, the unauthorized construction will not be dealt with, cannot be accepted by the Court.

The Municipality is the primary authority to look into the issue of unauthorized construction and take steps to deal with any unauthorized construction as soon as the same is detected.

As regards the construction made by Madhdumita, as the appeal is pending consideration, it will be open for the petitioner to raise all issues before the appellate forum.

As regards the construction made by Tapas, the Municipality is directed to take steps against such unauthorized construction in accordance with law at the earliest but positively within a period of eight weeks from the date of communication of this order.”

Being aggrieved, the private respondents in the writ petition, being Tapas and Madhumita, have come up by way of this appeal.

The construction raised by Madhumita is pending consideration in the statutory appeal preferred by Tapas and Madhumita as indicated above. The writ petitioner i.e. Prasanta Kumar Maity will be at liberty to agitate all points that he may wish to urge in respect of Madhumita's construction in that statutory appeal, including the point that apart from there being an unauthorized floor, there are also side deviations. Hence, the learned Judge, in our view, rightly directed that all issues in respect of Madhumita's construction will be agitated before the learned Civil Judge (Junior Division), who is in seisin of the statutory appeal.

As regards the construction made by Tapas, we see that there is a report in the records signed by the Chairman of the Municipality on September 20, 2023, which records certain illegal constructions at the instance of Tapas. However, since no steps have been taken by the Municipality in respect of such construction, the learned Judge has directed the Municipality to take steps against such unauthorized construction in accordance with law within the stipulated time period mentioned in the impugned order. We do not find any infirmity in such direction. We only clarify that before taking any coercive step, an

opportunity of hearing shall be granted by the Board of Councillors to the appellants herein and the writ petitioner i.e. Tapas, Madhumita and Prasanta Kumar Maity.

The Municipality shall also grant an opportunity to the appellants herein to file their exception to the aforesaid report dated September 20, 2023, if they wish to file any such exception. Copy of such exception, if filed, will be made available also to the writ petitioner, who may file his response thereto. The Municipality shall pass a reasoned order, in accordance with law, within two months from the date of communication of this order by the parties to the Chairman of the Board of Councillors of the Municipality.

Learned Advocate for the appellants says that the appellants shall not undertake any further construction till a decision is taken by the Municipality in terms of this order.

The order of the learned Single Judge stands modified to the extent indicated above.

The appeal and the connected application stand disposed of.

Since we have not called for affidavits, the allegations in the stay application 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.)