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22.02.2024
s.h.

In The High Court At Calcutta
Special Civil Jurisdiction
Appellate Side

C.P.A.N. 1407 of 2023
in
W.P.A. 3574 of 2022
Naresh Prasad @ Naresh Tatwa @ Jilor Prasad Tatwa
-versus
Sri Kamal Adhikary
with
WPA 4290 of 2024
Smt. Rita Devi
-versus
The Board of Councillors, Chairman in Council,
Kanchrapara Municipality & Ors.

Mr. Jaydip Kar, Sr. Adv.
Mr. Sourav Sen
Ms. A. Chakraborty
...For the Petitioner in WPA
4290 of 2023.

Mr. Prosenjit Nag
Mr. Goutam Misra
... for the Municipality.

Mr. Sabyasachi Mukherjee
Mr. Poulam Dey
Mr. Syed Neaz Ahmed
Mr. Mrinmoy Nandy
Ms. Arundhuti Barui
... for the respondent no. 4.
in WPA 4290 of 2024 &
for the petitioner in CPAN
1407 of 2023 in WPA 3574 of 2022.

The order passed by the Chairman of the Kanchrapara Municipality dated February 17, 2024 directing the petitioner to remove the unauthorized/ deviated area of the construction within three days is impugned in the instant writ petition.

The impugned order has been passed allegedly in compliance of the direction passed by this Court in WPA 3574 of 2022. As the order passed in the writ

petition was not complied, the complainant filed a contempt application being CPAN 1407 of 2023. In hot haste to comply the direction passed by the Court, the Chairman of the Kanchrapara Municipality passed the order for removal of the unauthorized construction. While passing the said order, it appears that the petitioner was not afforded proper opportunity to represent herself at the time of hearing.

The petitioner complains that neither spot inspection notice nor notice of hearing was served upon the petitioner. The Chairman of the Municipality is not the competent authority to pass any order of removal of the unauthorized construction.

Learned advocate representing the petitioner in the contempt petition submits that the spot inspection and the hearing was duly conducted.

Learned advocate representing the Municipality admits that the impugned order was passed for complying the order passed by the Court.

According to the provisions of law, the Board of Councillors of the Municipality is vested with the power to pass an order of demolition. The Chairman cannot usurp the jurisdiction of the Board of Councillors and unilaterally direct the petitioner to remove the unauthorized construction. There is nothing on record to suggest that a proper spot inspection was conducted and proper opportunity of hearing was given to the petitioner to place her case in support of the construction made.

The petitioner contends that the construction which has been held to be made in deviation of the sanctioned plan had been regularized by way of revised

sanctioned plan issued by the Kanchrapara Municipality.

Upon hearing the parties and upon perusal of the materials on record, I am of the opinion that the impugned order dated February 17, 2024 has been passed contrary to the provisions of the West Bengal Municipal Act, 1993. The same is accordingly set aside.

The Municipality is directed to take steps strictly in accordance with the order passed by this Court on November 15, 2022 and to comply the same positively by April 4, 2024.

The writ petition and the contempt application both stand disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)