

12. 15.04.2024
Court No.6
(Tanmoy)

MAT/442/2024

**SRI LAKSHMIKANTO BANERJEE
VS
STATE OF WEST BENGAL AND ORS.**

**WITH
IA NO: CAN/1/2024, CAN/2/2024**

Mr. Abhishek Banerjee, Adv.,
Mr. Subhrangshu Banerjee, Adv.

...for the appellant/writ petitioner.

Ms. Amrita Panja Moulick, Adv.

...for the State.

Affidavit of service filed in Court today be kept with the records. In spite of service, nobody appears for the Municipality. Insofar as the private respondents are concerned, it appears from the affidavit of service that two of them have moved from the recorded address and the other two have refused service. Hence, we are not inclined to defer hearing of this matter.

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

A judgment and order dated January 29, 2024, whereby a learned Judge of this Court disposed of the appellant's writ petition being WPA 25061 of 2018, is the subject-matter of challenge in this appeal filed by the writ petitioner.

The appellant had approached the learned Single Judge with the grievance that the building plan sanctioned by the Uttarpara-Kotrung Municipality in

favour of the 9th respondent on September 19, 2018, is *de hors* the West Bengal Municipal (Building) Rules, 2007. The writ petitioner contended that in an earlier round of litigation, by an order dated July 30, 2018, a Division Bench of this Court had directed the said Municipality to sanction a building plan in favour of the 9th respondent (appellant no.1 before the Division Bench), strictly in accordance with law. However, the building plan has been sanctioned in favour of the 9th respondent violating the provisions of law.

The learned Single Judge noted that a representation of the writ petitioner dated November 19, 2018, made before the Municipality questioning the validity of the sanctioned building plan issued in favour of the 9th respondent, is pending consideration. Accordingly, the learned Judge disposed of the writ petition with the following observations and directions:-

“In view of the aforesaid submission made on behalf of the petitioner and taking note of pendency of the demand notice before Uttarpara-Kotrung municipality wherein according of sanctioned plan dated 19th September, 2018 in favour of respondent no. 9 has been questioned, the concerned authority of Uttarpara-Kotrung municipality is directed to take decision on the said demand notice dated 19th November, 2018 within a period of twelve (12) weeks from the date of communication of this order and to decide whether said sanctioned plan was issued in accordance with relevant Building Rules or not. Before taking decision opportunity of hearing shall be granted to the petitioner as well as respondent no. 9 or their representatives. The reasoned decision to be taken by the concerned authority of Uttarpara-Kotrung municipality shall be communicated to the parties within one week thereafter.”

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

Learned Advocate for the appellant/writ petitioner says that even during the pendency of the writ petition, the private respondents proceeded with construction in accordance with the illegally sanctioned building plan. As of now, such construction has been completed by the private respondents who continued with the construction activities even after the learned Single Judge passed the impugned order.

Learned Advocate for the appellant drew our attention to paragraph 28 of the affidavit-in-opposition filed by the Municipality before the learned Single Judge. In that paragraph, the person, who affirmed the affidavit on behalf of the Municipality, has stated: *“I say that in the instant case the rule of F.A.R., i.e., Rule 48A of the West Bengal Municipal Building Rules, 2007 has not been followed.”* Learned Advocate says that since even according to the Municipality, the private respondents have raised the impugned construction without following the applicable Building Rules, the building in question must be demolished by the Municipality.

We have carefully considered the submissions made on behalf of the appellant/writ petitioner. Learned Advocate appearing for the State fairly says that the State shall render all necessary assistance to the

Municipality, in case it becomes necessary to demolish the impugned structure.

We see no apparent infirmity in the order under appeal. The learned Judge noticed that the appellant's representation complaining of an illegally sanctioned building plan is pending before the Municipality. The learned Judge directed disposal of such representation in accordance with law observing the principles of natural justice within a period of twelve weeks from the date of communication of the order. To our query as to whether or not the order of the learned Single Judge was communicated to the Municipality, learned Advocate for the appellant says that there was no separate communication. Copies of the appeal papers were served on the Municipality which included a copy of the order of the learned Single Judge.

We are of the view that the appellant should have communicated the order of the learned Single Judge as was directed by His Lordship. The Municipality cannot be faulted for not having taken any steps or decision in the matter, no communication having been made to it of the order of the learned Single Judge.

Accordingly, we direct the Municipality to dispose of the representation/application/demand notice of the appellant/writ petitioner dated November 19, 2018, within a period of twelve weeks from the date of communication of this order to it by the appellant along

with a copy of the representation dated November 19, 2018. The other portions of the order of the learned Single Judge shall remain unaltered. Opportunity of hearing shall be given by the Municipality to all concerned parties prior to taking any decision in the matter. The point to be decided by the Municipality is whether or not the building plan that was sanctioned in favour of the 9th respondent was in accordance with law and the applicable Building Rules. The other point that the Municipality shall decide is whether or not the construction that has been made by the private respondents is in accordance with the applicable Building Rules, including the Rule relating to F.A.R.

We clarify that we have not considered the merits of the case. The Municipality shall take an informed decision in the matter, in accordance with law. The entire exercise shall be completed within twelve weeks from the date of communication of this order by the appellant to the concerned Officer in the Municipality. If the Municipality finds merit in the grievance of the appellant/writ petitioner, appropriate consequential orders will be passed by the Municipality, in accordance with law.

Since we have not called for affidavits, the allegations made in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 442 of 2024 and the connected applications being IA No: CAN/1/2024 and CAN/2/2024 are disposed of accordingly.

All parties shall act on the basis of the server copy of this order, duly downloaded from the official website of this Court.

(Arijit Banerjee, J.)

(M.V. Muralidaran, J.)