

03. 22.03.2024
Court No.6
(Tanmoy)

MAT/539/2024

**SK. SELIM ALIAS SELIM SEKH AND ANR.
VS
THE STATE OF WEST BENGAL AND ORS.**

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

Mr. Rwitendra Banerjee, Adv.,
Mr. Shibasis Chatterjee, Adv.,
Mr. Sandip Kundu, Adv.,
Mr. Devdutta Pathak, Adv.

...for the appellants.

Mr. Lalit Mohan Mahata, Ld. AGP,
Mr. Ziaul Haque, Adv.

...for the State.

Mr. Subrata Ghosh, Adv.,
Mr. Sayantan Hazra, Adv.

...for the Murshidabad Municipality.

Mr. Pulakesh Bajpayee, Adv.

...for the respondent no.7/
writ petitioner.

Leave is granted to learned Advocate-on-Record for the appellants to cure the defects noted by the Stamp Reporter.

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

A judgment and order dated February 21, 2024, whereby the writ petition of the respondent no.7 herein being WPA 20451 of 2023, was disposed of by a learned Judge of this Court, is the subject-matter of challenge in this appeal.

The respondent no.7/writ petitioner approached the learned Single Judge with the complaint that the private respondents in the writ petition had made unauthorized construction encroaching on Municipal land. An order

dated February 6, 2024, was passed for holding spot inspection by the concerned Land and Land Reforms Officer in the presence of the parties and for the Municipality to file a report. The report that was filed before the learned Judge was to the effect that the private respondents in the writ petition, who are the present appellants, have occupied Municipal land and have made construction thereon.

The learned Judge noted that the Chairman of the Municipality has passed a demolition order in respect of the construction made by the private respondents in the writ petition. It was submitted on behalf of those respondents that they have preferred a statutory appeal against the demolition order and an *ad interim* order in their favour was passed by the Appellate forum.

The learned Judge observed that according to the provisions of law, the Chairman of the Municipality is not the Competent Authority to pass a demolition order. That power is vested with the Board of Councillors of the Municipality. The demolition order passed by the Chairman of the Municipality is not in accordance with law. The learned Judge disposed of the writ petition with the following directions:-

“As the municipality has already come to a considered opinion that the land in question is a municipal land, as such, the private respondents do not have any right to raise construction thereon.

Accordingly, the Municipality is directed to take necessary steps to deal with such unauthorised construction in accordance with the provisions of law after giving reasonable

opportunity of hearing to all the necessary parties. All the parties will be entitled to rely upon all documents in respect of their respective stand at the time of hearing.

A decision shall be taken in the matter at the earliest, but positively within a period of two months from the date of communication of this order.”

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

Learned Advocate for the appellants says that the appellants have no problem with the order impugned insofar as the same directs the Board of Councillors to take a fresh decision in the matter. Hearing has been fixed today (22.03.2024). If any adverse order is passed against the appellants, they will be in serious difficulty as the next four days are holidays and the Appellate forum will not be available to them. Hence they want some protection.

Learned Advocate for the respondent no.7/writ petitioner and learned Advocates for the State as well as the Municipality, say that there is no reason for the appellants to apprehend that an adverse order will be passed against them by the Municipality. This appeal is really not maintainable. The order of the learned Single Judge should not be interfered with.

We agree with learned Advocates for the writ petitioner, the State and the Municipality to the extent that the order impugned does not warrant any interference. We only grant a limited protection to the appellants by directing that in the event any adverse

order is passed against the appellants by the Board of Councillors of the Municipality at today's hearing, the same shall not be given effect to for a period of seven days from date. This is only to grant a window to the appellants to exercise their statutory right of appeal provided by Section 218(3) of the West Bengal Municipal Act, 1993. We make it clear that if an adverse order is passed by the Municipality and within the next seven days the appellants are unable to obtain any protective order from the Appellate forum, the Municipality will be at liberty to give effect to that order. We further clarify that the Board of Councillors of the Municipality shall take a fresh decision without being influenced by any observation in this order or in the order of the learned Single Judge impugned before us.

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 539 of 2024 and the connected application being IA No: CAN/1/2024 are accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Supratim Bhattacharya, J.)