

08. 01.05.2024
Court No.6
(Tanmoy)

MAT/669/2024
AKLIMA BEGUM
VS
THE STATE OF WEST BENGAL AND ORS.
WITH
IA NO: CAN/1/2024

Mr. Swarup Banerjee Adv., Mr. Manoj Kumar Bhattacharya, Adv., Mr. Arindom Chatterjee, Adv., Mr. Subham Biswas, Adv.	...for the appellant/ writ petitioner.
Mr. Suman Ghosh, Adv., Mr. Sanatan Panja, Adv.	...for the State.
Mr. Sujay Bandyopadhyay, Adv., Mr. Pradipta Siddhanta, Adv.	...for Medinipur Municipality.
Mr. Amit Ranjan Pati, Adv., Ms. Swastika Chowdhury, Adv.	...for the respondent nos.5-7.

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

A judgment and order dated March 4, 2024, whereby the appellant's writ petition being WPA 21169 of 2023, was in effect, dismissed by a learned Judge of this Court, is sought to be assailed in this appeal.

It appears that earlier, the appellant herein had approached a learned Single Judge of this Court by filing W.P. No. 3508 (W) of 2019. Her grievance was that the private respondents in that writ petition (who are also the private respondents herein) had made unauthorized construction and was also encroaching on the land of the appellant. The learned Judge, by a judgment and

order dated March 11, 2019, disposed of that writ petition with the following directions:-

“In the said conspectus, the competent authority of the Municipality is directed to take a decision as to whether any unauthorised construction has been raised by the private respondents, upon granting an opportunity of hearing to the petitioner and the private respondents and to communicate such decision to the petitioner and the private respondents within a period of 12 weeks from the date of communication of this order.

It is made clear in the event it is found that any unauthorised construction has been raised by the private respondents, necessary follow up steps shall be taken by the respondents, forthwith.”

It appears that after the aforesaid order was passed, the Administrator of Medinipur Municipality passed a demolition order on February 25, 2020.

The appellant herein approached this Court once again in the second round of litigation by filing WPA 21246 of 2022, with the grievance that the Administrator of the Municipality had passed the demolition order without following the procedure laid down in Section 218(1) of the West Bengal Municipal Act, 1993 (in short, ‘the 1993 Act’). Therefore, such demolition order could not be implemented. It appears from the order passed on that writ petition that the Municipality admitted that the demolition order had not been passed complying with the provisions of Section 218(1) of the 1993 Act. Observing that both the writ petitioner as well as the Municipality admit that the order passed by the Administrator of the Municipality is

contrary to the provisions of Section 218 of the 1993 Act, the learned Judge set aside that order of the Administrator. The learned Judge disposed of the writ petition with the following directions:-

“The Board of Councillors of Medinipur Municipality is directed to reconsider the prayer of the petitioner afresh after affording reasonable opportunity of hearing to all the necessary parties.

A reasoned order shall be passed and communicated to the parties.

The entire exercise shall be conducted and concluded at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order.”

It appears that pursuant to the aforesaid order demolition proceedings were initiated by the Board of Councillors of the Municipality under Section 218(1) of the 1993 Act. The appellant and the private respondents herein participated in such proceedings. The Chairman of the Board of Councillors of the Municipality passed an order dated April 13, 2023.

Challenging the aforesaid order, the appellant herein approached the learned Single Judge in the present round of litigation. The learned Judge noted from the order of the Municipality that there seems to be an issue of alleged encroachment by the private respondents on the land of the appellant. The writ petitioner contended that the construction put up by the private respondents is unauthorized. The private respondents maintained that the construction has been

made in accordance with the plan sanctioned by the Municipality.

The learned Judge concluded that the order impugned before Her Ladyship is an appealable order. Accordingly, the learned Judge, without interfering, disposed of the writ petition granting liberty to the parties to approach the appellate forum for appropriate relief.

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

Learned Advocate appearing for the appellant/writ petitioner, strenuously argued that the order of the Municipality, which was impugned before the learned Single Judge, proceeded completely on erroneous basis. It was passed on the basis of an earlier inspection report. A fresh local inspection is required to be conducted in the presence of the parties. The order is out and out erroneous. The order is so very erroneous that availability of an alternative remedy would not stand in the way of the Writ Court entertaining a writ application challenging such order. The learned Judge erred in not entertaining the writ petition.

We have not called upon the respondents to make any submission.

We find absolutely no merit in the argument advanced on behalf of the appellant. The order of the Municipality may well be an erroneous order. We make

no comment on that. However, the submission that if an order of an Authority is very erroneous, then the statutory remedy need not be taken recourse to and the Writ Court should interfere, is completely unacceptable. We are not aware of any such proposition of law, nor could any authority in support thereof be cited before us.

Section 218(3) of the 1993 Act, provides a remedy to any person aggrieved by an order passed by the Municipality under Section 218(1) of the 1993 Act by way of an appeal. Although learned Advocate for the appellant says that the remedy provided by the statute is not an efficacious remedy, we do not agree with him. To our mind, that remedy is definitely more efficacious than challenging the order by way of a writ application since amongst other reasons, disputed questions of fact are involved. The appellate forum under Section 218(3) of the 1993 Act is well equipped to decide disputed questions of fact by recording evidence of the parties. The Writ Court is not the appropriate forum for the same.

In view of the aforesaid, we are of the opinion that the learned Judge rightly declined to interfere. We see no infirmity in the order under appeal.

The appeal being MAT/669/2024 and the connected application being IA No: CAN/1/2024 accordingly fail and are dismissed with costs assessed at

Rs. 10,000/- (Rupees Ten Thousand) to be paid to the High Court Legal Services Authority. Such payment is to be made within a fortnight from date.

The department shall forward a copy of this order to the Member Secretary of the High Court Legal Services Authority, who shall draw to our attention failure, if any, on the part of the appellants to pay the costs as directed above.

After this order is dictated, learned Advocate for the appellant says that if the appellant approaches the appellate forum, then the statutory appeal should be disposed of within a prescribed period of time. We are told that the Appellate Authority in this case is the learned Civil Judge (Senior Division), 2nd Court, Paschim Medinipur. We are conscious of the pressure of work on the district judiciary. However, if an appeal is preferred by the present appellant against the order of the Municipality dated April 13, 2023, the Appellate Authority is requested to dispose of the same as expeditiously as possible and preferably within a period of one year from the date of filing of the appeal.

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.)

(Prasenjit Biswas, J.)