

04.11.2024
Sl.27.
Suman
Ct.No.15

WPA 13154 of 2024

Monika Dutta
Vs.
The Bankura Municipality and Ors.

Mr. Samiran Mandal
Mr. Abhinaba Dan
Mr. Nitish Samanta
..for Bankura Municipality

Mr. Malay Bhattacharya
Mr. Subhrajyoti Ghosh
..for private respondent no.7

By filing this writ petition, the petitioner has prayed for an order restraining Bankura Municipality from demolishing the relevant building following its order dated April 24, 2024, as appearing at page 56 of this writ petition.

The relevant facts involved in this case are outlined in the order dated July 16, 2024, which is quoted as follows:

“Respondent no.7 had filed a Public Interest Litigation before this Court alleging, inter alia, that the petitioner in this case had been constructing a house on a land classified as “Pukur Paar”.

A Division Bench of this Court disposed of the said Public Interest Litigation giving a direction upon the Sub-Divisional Officer,

Bankura, to conduct a spot inspection of the area and to take action in accordance with law.

The Sub-Divisional Officer found that the relevant land was classified as “Bastu” long ago. However, the petitioner had raised the construction without any permission from the Municipality.

The relevant part of the order is quoted below:-

“Considering all these, it appeared that the respondent no.7 constructed the building at the suit plot violating provision on West Bengal Municipal (Building) Rules, 2007 but it cannot be concluded that she constructed the building on any land classified as “PUKUR” since the plot no.8519 in consideration has been converted to “BASTU” long ago, as transpired from the report of BL&LRO, Bankura-I and available plot informationas annexed in (Annexure-II).

In view of the above, since in the capacity of the Sub-Divisional Officer, I have been conferred with no inherent power to take any action against such illegal construction, it is recommended to the Board of Councillors of Bankura Municipality to proceed to take necessary action as per law against the respondent no.7, Smt. Monika Dutta immediately for violating the provision of the West Bengal Municipal (Building) Rules, 2007.

Since BL&LRO, Bankura-I is the custodian of ROR, he is directed to conduct further proceedings in respect of updation of record of rights, if required, as per law.”

After the said order of the Sub-Divisional Officer, respondent no.7 again approached this

High Court by filing WPA 24969 of 2023, seeking an order upon the Municipality to demolish the construction in question.

A Co-ordinate Bench disposed of the said writ petition by an order dated February 20, 2024, with the following directions:-

“As it appears that there is a finding from the Sub-Divisional Officer, Sadar Bankura that unauthorized construction has been made at the behest of the private respondent, accordingly, the Municipality is directed to take necessary steps to deal with the unauthorized construction in accordance with law, after giving a reasonable opportunity of hearing to all the necessary parties.

Necessary consequential steps shall be taken in the matter at the earliest, but positively within a period of eight weeks from the date of communication of this order.”

Thereafter, the matter was taken up for hearing by the Municipality giving a fresh notice to the petitioner. By an order dated April 24, 2024, the Bankura Municipality communicated to the petitioner as follows:-

“With reference to the above you are hereby asked to demolish the illegal construction at Gopinathpur, Upar Para within Ward No.01 under Bankura Municipality within 30/04/2024. Otherwise, this office will take legal action against you.”

Though respondent no.7 submits that the Board of Councillors of the Municipality has passed a resolution for demolition, the

Municipality could not produce any such resolution before this Court. The petitioner also submits that she has not been communicated the resolution taken by the Board of Councillors.

Prima facie, I am of the view that the allegation of respondent no.7 with regard to the nature of the relevant land has been proved to be incorrect. From the relevant record of rights it appears that the land has been classified as “Bastu”. In fact, the Sub-Divisional Officer, Bankura also found that the relevant land was “Bastu”.

The Sub-Divisional Officer, Bankura, in my view, went beyond the scope of the order passed in Public Interest Litigation by observing that the petitioner has raised the construction without any sanctioned plan from the Municipality.

Since fundamental allegation, which triggered the demolition proceedings against the petitioner, appears to be incorrect, I restrain the hand of the Municipality from implementing the order of the Municipality dated April 24, 2024, for a period of six weeks from date.

The matter shall retain its position in the list.

The Municipality shall produce the relevant records on the next date of hearing.”

Today, at the time of call, the petitioner is not represented.

Learned advocate appearing for respondent no.7, however, opposes the prayer of the writ petitioner. He submits that the land in question was classified as “Pukur”. Subsequently, the same has been illegally converted as “Bastu” land. He also submits that the petitioner by suppressing the nature of land has received Rs.50,000/- under a scheme called “Housing for All.” He further submits that the said fact has been admitted by the Municipality in its letter dated December 6, 2022, addressed to the petitioner.

I am of the view that respondent no.7, in his capacity as a Councillor of the local ward, cannot contest this writ petition. A councillor must act through the Municipality; therefore, when the Municipality is a respondent in this writ petition, respondent no.7 cannot contest the petition.

In the order dated July 16, 2024, I have already observed that the fundamental allegation against the petitioner regarding classification of land was incorrect and the Sub-Divisional Officer,

Bankura went beyond the scope of the order passed in the Public Interest Litigation by observing that the petitioner has raised the construction without any sanctioned plan from the Municipality.

It further appears that the demolition notice dated April 24, 2024, has been issued by the Chairperson of Bankura Municipality.

Learned advocate appearing for Bankura Municipality acknowledges the fact that the said notice was issued without any resolution of the Board of Councillors of the Municipality.

In my view, it was beyond the competence of the Chairperson to issue such a demolition notice without being backed by any resolution from the Board of Councillors.

In that view of the matter, I set aside the demolition notice dated April 24, 2024, issued by the Chairperson of Bankura Municipality. The order of the Sub-Divisional Officer as quoted above is also set aside.

I grant liberty upon the petitioner to make an application before the Municipality for regularisation of her construction. If such representation is made, the Municipality shall consider the same in accordance with law.

Accordingly, **WPA 13154 of 2024** is disposed of.

Urgent photostat certified copy of this order,
if applied for, be supplied to the learned advocates
for the parties on usual undertakings.

(Kausik Chanda, J.)