

12.11.2024
Item No. 63
PG
Ct. No.7

W.P.A. 12284 of 2023

**Krishnendu Kumar Barik
Vs.
The State of West Bengal & Ors.**

Mr. Soumen Kr. Dutta
Mr. Shubham Duttafor the petitioner

Mr. Rabilal Maitra
Mr. Amlan Kr. Mukherjee
Mr. Rajitlal Maitra.....for the private respondents

Ms. Shipra Majumder
Ms. Sangeeta Roy.....for the State

1. The petitioner alleges that the private respondents have made unauthorised construction of a two storied building at Plot Nos. 957, 957/1519 and 958 (Western Part) without obtaining sanction plan from the Contai Municipality for construction of the 2nd storey.
2. Mr. Dutta, learned advocate appearing for the petitioner refers to a reply under the RTI Act dated July 5, 2012, wherein it has been stated that Manas Kumar Barik has constructed double storied building on Plot Nos. 957, 958/1519 and 958 of mouza-Athilagari. It has been further stated in the said reply that Manas Kumar Barik constructed his building without obtaining any plan from the office of the Contai Municipality.
3. Mr. Dutta further refers to another information supplied by the competent authority under the provisions of the Right to Information Act dated March 4, 2024.

4. After going through the said reply, this Court finds that the Executive Officer & SPIO, Contai Municipality has specifically stated that as per physical inspection, it is found that Manas Kumar Barik (since deceased) has constructed a double storied building in mouza-Athilagori within Ward No. VIII (Old) under Police Station-Contai on Plot Nos. 957, 957/1519 and 958 (Western Part). The said reply further states that Manas Kumar Barik obtained building plan in the year 1989 for construction of the ground floor only on Plot No. 957 vide sanctioned plan dated September 28, 1989. It has been further stated therein that Manas Kumar Barik (since deceased) constructed a separate double storied building on Plot No. 958 (Eastern Part) though the plan was sanctioned for ground floor vide plan no. 43/94-95 but the first double storied building is unauthorised as plan was not sanctioned in Plot Nos. 957/1519 and 958 except Plot No. 957.
5. In the said reply, it was clarified that in the reply to the queries sent by memo dated July 5, 2012, it has been inadvertently recorded as Plot No. 958/1519 in stead of Plot No. 957/1519.
6. After going through the replies furnished by the competent authority of the Contai Municipality, it appears to this Court that after physical inspection, the authorities were of the opinion that the plan was sanctioned only in respect of ground floor, though the

construction made by Manas Kumar Barik was a two storied one. Mr. Dutta, therefore, submits that the 2nd storey of the two storied building is an illegal and unauthorised one and the same should be directed to be demolished.

7. Heard Mr. Adhikari, learned advocate appearing for the Municipality. He submits that the Municipality, upon physical inspection, have furnished the reply under the Right to Information Act.
8. Learned advocate appearing for the private respondents disputes the submission made by Mr. Dutta as well as Mr. Adhikari. He submits that Plot Nos. 957, 957/1519 and 958 have been re-numbered as LR Plot Nos. 1229, 1230 and 1233 in the L.R. Record of Rights.
9. The learned advocate for the private respondents refers to a document dated April 26, 2024 in support of his contention that the Municipality has granted building permit for addition to the existing building.
10. It appears from the said document that the building permit dated April 19, 2024 is valid upto April 25, 2027 for residential purpose. From the payment receipt annexed thereto, it appears that the payment of the requisite fees have been remitted on May 22, 2024.
11. Mr. Dutta, learned advocate appearing for the petitioner submits that the 2nd storey was constructed over the ground floor prior to the issuance of the building permit dated April 19, 2024. He submits that

the Municipal authorities could not have regularised an unauthorised construction as there is no provision for regularisation of an unauthorised construction.

12. Since the dispute is as to whether the 2nd storey was constructed prior to the issuance of the building permit dated April 19, 2024. Such being a disputed question of fact, has to be decided by the authorities of Contai Municipality.
13. Since attention of the Court has been drawn to certain subsequent events by way of producing a building plan and a document showing that the building permit has been issued on April 19, 2024, this Court grants liberty to the petitioner to file a comprehensive representation before the Board of Councillors, Contai Municipality within a period of two weeks from the date of receipt of a server copy of this order.
14. In the said representation, the petitioner will be at liberty to raise all the points with regard to the alleged construction as well as issuance of the alleged sanction plan on April 19, 2024. If such representation is submitted before the Board of Councillors, Contai Municipality within the time limit indicated hereinbefore, the Board of Councillors shall afford an opportunity of hearing to the petitioner, the private respondents or their authorised representative and take a decision on the representation in accordance with law by passing a reasoned order. Such order shall be

communicated to the respective parties immediately thereafter.

15. The entire exercise shall be completed within a period of four weeks from the date of submission of the representation, as directed by this Court.
16. Needless to state, in the event the Municipality finds that there is any unauthorised construction, steps should be taken for demolition of such unauthorised construction in accordance with law.
17. The learned advocate for the private respondents is directed to supply a photocopy of the plan along with the documents, which have been placed before this Court by November 13, 2024.
18. With the above observations/directions, the writ petition is disposed of.
19. No costs.
20. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)