

S/L 3
25.09.2024
Court. No. 551
Suvayan

WPA 16639 of 2024

Tapan Kumar Guin
Vs.
State of West Bengal & Ors.

Mr. Sukanta Das
Mr. Snehasis Jana
Mrs. Tutun Das

...for the petitioner.

Mr. Md. Mokaram Hossain

...for the State.

Ms. Madhumita Patra

...for the Municipality.

Mr. Rwitendra Banerjee
Mr. Shibasish Chatterjee

...for the respondent no. 6.

1. By filing the instant writ petition the writ petitioner has prayed for issuance of appropriate writ against the respondents more specially against the respondent nos. 3 and 4 to initiate appropriate proceeding to demolish the unauthorized and illegal construction of the private respondent no. 6 as per memo no, 1045/PW/GN dated 10.01.2018 over plot of land being L.R. Plot No. 350, J.L. No. 147 at Mouza – Konnagar, Khatian No. 582, Holding No. 229-Ka, Ward No. 15 under the Ghatal Municipality, Paschim Medinipore.

2. In course of his argument learned Advocate for the writ petitioner at the very outset draw attention of this Court to the memo dated 18.12.2017 whereby and whereunder pursuant to the direction passed by this Court in an earlier round of litigation, after hearing the

writ petitioner and the private respondent the Board of Councilors of Ghatal Municipality noticed that statutory side space has not been maintained while erecting the building by the private respondent no. 6 and accordingly a decision was taken for demolition of the said building.

3. Challenging the said order the private respondent filed an appeal under Section 218 Sub-Section (3) of the West Bengal Municipal Act, 1993 before the learned Civil Judge (Junior Division), Ghatal, Paschim Medinipore by filing Title Suit No. 9 of 2018 which is, however, dismissed for default by an order dated September 20, 2022 as reveals from page nos. 33 and 34 of the writ petition.

4. It is submitted that soon thereafter the writ petitioner made a representation before the respondent nos. 3 and 4 authority for implementation of the order of the Board of Councilors to pull down the illegal and unauthorized construction as made by the private respondent no. 6 and accordingly the respondent nos. 3 and 4 issued the Memo No. 1688/PW/GM dated 06.03.2024 in favour of the private respondent no. 6 to act in accordance with law and a copy which was served upon the writ petitioner.

5. It is the grievance of the writ petitioner that even after dismissal of appeal the respondent nos. 3 and 4 sat tight over the matter and they are doing nothing towards removal and/or demolition of the unauthorized construction.

6. *Per contra*, Mr. Banerjee, learned Advocate for the private respondent no. 6 in course of his argument has handed over a photocopy of the certified copy of all orders passed in Title Suit No. 27 of 2024 by the Court of Civil Judge (Senior Division), Ghatal, Paschim Medinipore wherein the legality and validity of the notice dated 06.03.2024 is the subject matter of litigation.

7. From the photocopy of the order sheets as passed in Title Suit No. 27 of 2024 it reveals that learned Civil Judge (Senior Division), Ghatal, Paschim Medinipore passed an *ad interim* order of injunction restraining the respondent nos. 4 and 5 herein to change the nature, character and possession of the suit property.

8. It is submitted by Mr. Banerjee since the matter is sub-judice before a competent civil court no coercive order may be passed against the private respondent. Such submission is, however, disputed by the learned Advocate for the writ petitioner. It is submitted that in the said suit the present writ petitioner was not made a party defendant.

9. For effective adjudication of the instant lis this Court proposes to look to the provision of Section 218 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the 'said Act') and the same is quoted hereinbelow in verbatim:

“218. Order for demolition or alteration of buildings in certain cases:-

(1)

(2)

(3) An appeal against an order made by the Board of Councillors in this behalf shall lie with the Court having jurisdiction.

(4) Omitted.

(5) Notwithstanding anything contained in the foregoing provisions of this section or elsewhere in this Chapter, if the Chairman-in-Council is of opinion that immediate action is necessary in respect of any building being constructed or any work being carried on, in contravention of the provisions of this Act, it may, for reasons to be recorded in writing, cause such building or work to be demolished forthwith.”

10. On perusal of the aforementioned legislative provision it thus reveals that challenging an order of demolition as passed by Board of Councilors an appeal shall lie before a Court having jurisdiction.

11. Admittedly, challenging the order of demolition an appeal was preferred before the learned Civil Judge (Junior Division), Ghatal, Paschim Medinipore with the nomenclature Title Suit No. 9 of 2018 which was dismissed for default on September 20, 2022.

12. For some reason or other the private respondent no. 6 had filed another Title Suit before the learned Civil Judge (Senior Division), Ghatal, Paschim Medinipore without impleading the present writ petitioner as party defendant.

13. In the perspective of the facts and circumstances as discussed supra and while disposing the instant writ petition this Court permits the present writ petitioner to file an appropriate application before the learned Civil

Judge (Senior Division), Ghatal, Paschim Medinipore in Title Suit No. 27 of 2024 to make himself as a party defendant and in the event such an application is filed after serving a copy of the same to the learned Advocate for the private respondent no. 6 herein learned Civil Judge (Senior Division), Ghatal, Paschim Medinipore is directed to dispose of the said application in accordance with law positively within three working days from the date of filing of the said application after giving an opportunity of filing written objection to the plaintiff who is the private respondent no. 6 herein.

14. It is further directed that the learned Civil Judge (Senior Division), Ghatal, Paschim Medinipore shall frame two preliminary issues namely; with regard to the maintainability of the said suit as well as with regard to the entertainability of the said suit on the ground of jurisdiction and shall dispose of the same within a month after opening of the Court after the long vacation, 2024.

15. Learned Civil Judge (Senior Division), Ghatal, Paschim Medinipore is directed to act on the server copy of this order.

16. In the event learned Civil Judge (Senior Division), Ghatal, Paschim Medinipore holds that the Title Suit No. 27 of 2024 is not maintainable in its present form and/or it has got no jurisdiction to entertain the said suit, the Board of Councilors and the Chairman of Ghatal Municipality shall proceed thereafter in accordance with

law for demolition of the illegal building as erected by respondent no. 6.

17. With the aforementioned observations, the instant writ petition being **WPA 16639 of 2024** is hereby disposed of.

18. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)