

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***M.A.T. 1301 of 2023
(CAN 2 of 2023)***

***Malda Real Estate Private Limited & Anr.
-Vs-
State of West Bengal & Ors.***

For the Appellants	:	Mr. Pradyumna Sinha, Adv. Mr. Sannianya Datta, Adv. Ms. Anjali Roy, Adv.
For the Municipality	:	Mr. Ashoke Banerjee, Sr. Adv. Mr. Sonel Sinha, Adv. Mr. Avishek Prasad, Adv.
For the State	:	Mrs. Jhuma Chakraborty, Sr. Govt. Adv. Ms. Indrani Nandi, Adv.
Heard on	:	29.07.2024 & 06.08.2024
Judgment on	:	06.08.2024

Joymalya Bagchi, J. :-

1. Appellants are aggrieved by the order passed by the Hon'ble Single Judge whereby the Hon'ble Judge directed the appellants to make representation before the respondent-English Bazar Municipality and the

Municipality was called upon to conduct a spot inspection, give opportunity of hearing to the parties and pass a final order on such representation. It was also observed if any illegal construction was detected, necessary steps shall be taken to deal with the same.

2. Mr. Pradyumna Sinha for the appellants contends the respondent no.8 is a local club and had unauthorisedly set up an illegal construction in front of the premises of the appellants. His clients had made representation to the Municipality concerned but no steps were taken. Hence, he was constrained to approach this court by way of a writ petition.

3. We have considered the materials on record. By interim orders the Hon'ble Single Judge directed the private respondent no.8 not to undertake any further construction. Alleging violation of the same contempt proceeding was instituted. Finally, by the impugned order both the writ petition and the contempt proceeding were disposed of directing the appellants to make representation before the Municipality concerned and the Municipality was directed to pass a final order with regard to the construction made by private respondent no.8 after making spot inspection and giving opportunity of hearing to the parties.

4. Mr. Sinha contends Hon'ble Single Judge failed to consider that no material was placed before the first court justifying validity of the unauthorised construction. On the other hand, egregious conduct of

private respondent no.8 was evident in continuing their construction notwithstanding interim orders passed by the Hon'ble Single Judge.

5. Having heard the appellants this court directed the Municipality concerned to submit report with regard to the validity of the alleged unauthorised construction.

6. Report on behalf of the English Bazar Municipality signed by its Chairman is placed on record. From the report it appears a spot inspection was conducted and the following findings were noted :-

“On spot inspection and on verification by the said inspection team, it appears that the alleged construction is situated at the extreme one side of a Municipal road and is a masonry structure with tin shed bearing following measurements :-

- 1) Length – 5.40 Metre,*
- 2) Breadth – 1.95 Metre,*
- 3) Height (from western side) 2.40 Metre and 2.10 Metre (from eastern side) respectively.*

The said masonry structure as above referred is not exempted under section 203 of the West Bengal Municipal Act, 1993 read with rule 4, rule 10, rule 11 of the West Bengal Municipal (Building) Rules, 2007 from obtaining approval of building site and from obtaining sanction of building plan to construct or reconstruct building.

The undersigned is thus sought liberty from this Hon'ble Court to initiate appropriate proceeding under the provision of West Bengal Municipal Act, 1993 read with West Bengal Municipal (Building) Rules, 2007 for not obtaining approval of building site and sanctioned building plan.”

7. Perusal of the report leaves no doubt that a masonry structure with a tin shed had been constructed in front of the appellants' building. No permission was granted for the said construction and the said structure is not exempted under the provisions of the West Bengal Municipal Act or Rules framed thereunder.

8. In spite of notice, nobody appears on behalf of the respondent no.8.

9. Accordingly, we are of the view the spot inspection undertaken by the Municipality concerned demonstrates the alleged construction is wholly unauthorised.

10. Hence, we direct the respondent-English Bazar Municipality to pass appropriate demolition order with regard to the said illegal unauthorised construction and take necessary steps to implement the same in accordance with law. The entire exercise shall be concluded within two months from date. In the event, there is resistance the Municipality concerned shall be at liberty to take police assistance, if necessary.

11. With the aforesaid directions, the appeal is disposed of.

12. In view of disposal of the appeal, connected application being CAN 2 of 2023 is also disposed of.

13. There shall be no order as to costs.

14. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

akd

