

15 11.03.2024
rkd Ct.15

W.P.A. 14230 of 2016

Krishna Bilash Konar & Anr.

-vs-

State of West Bengal & Ors.

Mr. Dilip Kumar Samanta,
Mr. Biswapriya Samanta

....for the petitioners.

Mr. Uttiya Ray,
Mr. Arnab Mandal

....for the respondent nos.9 & 10.

Mr. Subhasis Bandopadhyay

....for the Municipality.

Mr. Ashim Kumar Ganguly,
Ms. Sukla Das Chandra

....for the State.

The writ petition has been instituted, *inter alia*, challenging the order of the Board of Councillors of Burdwan Municipality which has been communicated by the Chairman of the municipality vide memo dated 7th March, 2013.

It has been submitted on behalf of the petitioners that by wrongly applying Section 217 of the West Bengal Municipal Act, 1993 (hereinafter referred to as "the said Act of 1993"), the building plan which was sanctioned vide memo dated 27th August, 2012 was withdrawn and the cancellation of holding was directed to be considered which was allotted in favour of the petitioners.

It has been submitted on behalf of the petitioners that upon following the due procedure plan was obtained from the concerned authority of

the municipality on 27th August, 2012 and based on the complaint lodged by the private respondents the said plan was withdrawn without assigning any cogent reasons and it is also contended what constituted material misrepresentation or fraudulent statement which led the concerned authority of the municipality to apply Section 217 has not been disclosed in the order impugned. Petitioners pray for cancellation of the order which has been communicated vide memo dated 7th March, 2013.

The Court has posed query to the learned advocate representing the municipality as to how it has been concluded that there was material misrepresentation or fraudulent statement made by the petitioners while obtaining sanctioned plan on 27th August, 2012 since the order impugned is silent on this aspect. However, this Court has not received satisfactory reply on behalf of the municipality.

Private respondents are represented by learned advocates who submits that proceeding was initiated by the municipality for taking decision under Section 217 of the said Act of 1993 based on the complaint lodged by them since according to the private respondents the land in question in

connection with which building plan was sanctioned in favour of the petitioners belongs to them.

It is also submitted that the predecessor of the vendor of the petitioners sold out the land in question to the private respondents and according to the private respondents they are the owners of the said land. Therefore, it has been submitted on behalf of the private respondents that there is no anomaly in the order passed by the municipality as communicated vide memo dated 7th March, 2013.

State respondents are also represented by learned advocates.

Having considered the submissions made by the parties and on perusal of the impugned decision of the municipality as communicated vide memo dated 7th March, 2013 what is striking that even the municipality was not certain about the conclusion arrived at by them while passing the order in terms of Section 217 as a result whereof it has been held “sanctioned plan may (sic) considered for withdrawal u/s 217”. Therefore, it transpires that the municipal authority was also not certain whether to pass order in terms of Section 217 or not as a result whereof the word “may” was used which discloses the vagueness of

the order.

Two conditions are stipulated under Section 217 of the said Act of 1993 for withdrawal of sanctioned plan i.e. either material misrepresentation or fraudulent statement made by the applicant while obtaining sanctioned plan. On perusal of the impugned decision it does not appear that any conclusion has been made by the municipality that the petitioners made material misrepresentation or fraudulent statement in order to procure sanctioned plan dated 27th August, 2012.

From the submissions of the parties as well as from the impugned order itself it appears that there might be certain civil dispute subsisting in between the petitioners and the private respondents relating to ownership of the land in question for which the parties are required to approach the civil Court. A suit instituted by the private respondents is still pending as submitted by the learned advocate for the private respondents.

In view of the aforesaid discussion, the decision of the Board of Councillors which has been communicated vide memo dated 7th March, 2013 stands set aside.

However, this order shall not preclude the

concerned authority of the municipality to initiate proceeding under Section 217 of the said Act of 1993 afresh and to pass an order after granting opportunity of hearing to the parties provided it is demonstrated by the private respondents that there is material misrepresentation or fraud at the instance of the petitioners in obtaining sanctioned plan dated 27th August, 2012.

With the aforesaid directions and observations the writ petition stands disposed of.

However, there shall be no order as to costs.

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

(Saugata Bhattacharyya, J.)