

Item No.189(ML)

19.03.2024
Ct-24

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 17658 of 2022
Nakul Mondal

v.

The State of West Bengal & Ors.

Mr. Jayak Gupta
Mr. Prativa Ghatak
... for the petitioner.

Mr. T.K.Chatterjee
Mr. Sanjoy Ghosh
... for the respondent nos. 4 & 5.

The order passed by the Chairman, Old Malda Municipality on June 30, 2022 is impugned in the instant writ petition.

It appears that the said order was passed on June 30, 2022 allegedly in compliance of the direction passed by the Court in WPA 16992 of 2019.

The Court directed the Municipality to apply its mind to the question as to whether construction existing in the address is legal or illegal. The Municipality was directed to hold an inspection and prepare a report which was directed to be circulated amongst the parties.

Learned advocate for the petitioner submits that the report of spot inspection was not circulated. The impugned order, however, records that the report was handed over to the parties for filing their written version.

The impugned order mentions that no unauthorized construction has been found but does not

mention the nature of the construction that has been found.

The impugned order primarily mentions that tax receipt was issued in the name of the predecessor-in-interest of the private respondents in respect of the said premises. The moot query as to whether the construction was made in accordance with any plan or not, is not answered therein. There is only a bald submission that unauthorized construction has not been found.

The fact that the private respondents are possessing the property for more than forty years by ousting the real owner adversely is mentioned therein but there is not a single sentence mentioned as to whether the construction has been made in accordance with any plan or not. There is also no indication with regard to the claim of the private respondents regarding construction being made in accordance with a plan.

To ascertain as to whether the construction is unauthorized or not, the very first thing that is required to be noticed is whether sanctioned plan exists for making construction. The impugned order does not mention of any sanctioned plan.

Be that as it may, as it appears that there is no mention as to why the Municipality opined that there is no unauthorized construction, accordingly, the said order cannot be treated to be a reasoned one. Non-disclosure of the reason as to how the Municipality concluded that there is no unauthorized construction renders the said order bad in law being a non-speaking one. The same is liable to be set aside and is, accordingly, set aside.

The Municipality is directed to reconsider the matter afresh by properly ascertaining as to whether any plan exists for raising the subject construction.

A fresh opportunity of hearing shall be given to all the necessary parties to produce documents in support of the construction made.

A decision 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.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)