

Item no. 45

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 19545 of 2021

Manasi Roy

vs.

State of West Bengal & ors.

Appearance:

For the petitioner : Mr. Uttiya Ray
Mr. Arnab Mandal

For the Municipality : Mr. Subhasis Bandopadhyay

For respondent no. 5 : Mr. Indranuj Dutta
Mr. Atanu Basu
Ms. Benazir Sk.

Heard on : 05.11.2024

Judgment on : 05.11.2024

Hiranmay Bhattacharyya, J.:

1. The petitioner alleges that the private respondent who is the adjoining land owner has raised an illegal construction by encroaching upon the property of the petitioner. The petitioner filed a suit being T.S. No. 171 of 2017 before the learned Civil Judge, (Junior Division), 2nd Court at Burdwan for a

decree for permanent injunction restraining the defendant and their men and agents from interfering with the peaceful right, title, interest and possession of the plaintiff that is the petitioner herein in respect of the A and A-1 Schedule property upon declaration of the plaintiffs/petitioner's title thereto. The petitioner in the said suit also prayed for a decree for declaration to the effect that A-1 Schedule property is the part and parcel of the A Schedule property and for a further declaration that A-1 Schedule property does not pertain to the B Schedule property.

2. It is not in dispute that the learned Civil Judge, (Junior Division), 2nd Court at Burdwan by an order being order no. 15 dated 08.01.2018 directed both the parties to maintain status quo as regards nature, character and possession over A-1 Schedule property in the light of the report of the Commissioner which was filed in the said title suit.

3. The petitioner lodged a complaint before the Municipal Authority alleging that the private respondent herein has made a construction without obtaining any sanctioned plan from the Municipal Authority. The Chairperson of the Board of Administrators, Burdwan Municipality passed an order dated 02.09.2021 directing the private respondent herein to demolish the entire unauthorized construction with a further direction that the same will be executable only after the disposal of the civil suit pending between the parties.

4. Since the Municipal Authority was not a party to the title suit and according to the petitioner, the status quo order is not binding upon the Municipal Authority, the petitioner chose to file an application under Article 226

of the Constitution of India praying for modification of the order dated 02.09.2021.

5. Mr. Ray, learned counsel representing the petitioner submits that since the petitioner is not aggrieved by the order of demolition, the order impugned in this writ petition is not an appellable one under Section 218(3) of the West Bengal Municipal Act, 1993 (for short, the 1993 Act). He submits that the petitioner has approached this Court for implementation of the order of demolition and has not challenged the order of demolition and, therefore, the petitioner should not be relegated to the forum provided under Section 218(3) of the 1993 Act.

6. Section 218(3) of the 1993 Act states that an appeal against an order made by the Board of Councillors in this behalf shall lie to the Court having jurisdiction.

7. An order of demolition was passed by the competent authority of the Municipality for demolition and the petitioner has prayed for modification of such order as would be evident from the relief claimed in Prayer (b) of the writ petition which runs thus:

“(b) A Writ in the nature of Mandamus, commanding the respondent municipal authority to modify and/or cause to modify its own order dated 02.09.2021, pertaining to the unauthorized construction made by the private respondent no. 5, to such extent, whereby and where under the execution of the direction for demolition of such unauthorized construction is not withheld and/or kept in abeyance till the disposal of the Title Suit No. 171 of 2017, pending before the Ld. Civil Court (Junior Division), 2nd Court, Burdwan, but rather the same is implemented and/or executed forthwith on the failure of the said private respondent no. 5, to carry out such demolition by herself.”

Thus, it is evident that the petitioner is aggrieved by the said order which is undoubtedly an order of demolition

8. The Hon'ble Division Bench in **MAT 1166 of 2021** in the case of **Krishnendu Roy vs. State of West Bengal & ors.** delivered on 18.01.2022 after noting that the existence of an efficacious alternative remedy is not an absolute bar to the maintainability of the writ petition was of the view that since Section 218(3) of the 1993 Act provides an efficacious alternative remedy, an aggrieved party has to approach the forum contemplated by Section 218(3) of the 1993 Act. The case of the petitioner does not fall within the exceptions carved out by the Hon'ble Supreme Court wherein application under Article 226 of the Constitution of India can be entertained irrespective of existence of alternative remedy.

9. In view thereof, this Court is not inclined to exercise discretion in favour of the writ petitioner.

10. Mr. Ray, learned counsel appearing for the petitioner placed reliance upon the decision of the Coordinate Bench in the case of **Shanti Dey & anr. vs. State of West Bengal & ors.** in **W.P. 11210(W) of 2017** and decision of the Hon'ble Division Bench in the case of **Shyamsundra Mishra & ors. vs. Radha Kumari Tiwari & ors.** in **MAT 1144 of 2024.**

11. In **Shanti Dey** (supra), the petitioner therein approached the writ court with a prayer for implementation of the order of demolition passed by the competent authority. In the case on hand, the petitioner has prayed for modification of the order of demolition passed by the competent authority. The

said decision being distinguishable on facts cannot come to the aid of the petitioner.

12. In **Shyamsundra Mishra** (supra), the Hon'ble Division Bench took note of the fact that no notice was served upon the appellants therein. It is well settled that for violation of the principles of natural justice, the writ court can interfere even if there is existence of an efficacious alternative remedy. The said decision being distinguishable on facts cannot come to aid of the petitioner.

13. Mr. Ray also placed reliance upon the decision of the Hon'ble Division Bench in the case of **Rampuriah Brothers Pvt. Ltd. vs. Calcutta Municipal Corporation** reported at **AIR 1988 Calcutta 370** in support of his contention that a writ petition praying for demolition for unauthorized construction is maintainable during the pendency of a civil suit. There is no quarrel to the aforesaid proposition laid down in **Rampuriah Brothers Pvt. Ltd.** (supra). However, the said decision cannot come to the aid of the petitioner, as this Court is not inclined to entertain the writ petition in view of the existence of an efficacious alternative remedy as provided under the 1993 Act.

14. Accordingly, this writ petition stands **disposed of** with a liberty to the writ petitioner to approach the appropriate forum provided under Section 218(3) of the 1993 Act.

15. There will however be no order as to costs.

16. Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)

Amitava Nag (AR. CT.)