

17.09.2024
Sl. No.2
Ct. No.15
S.A.

WPA 19593 of 2024

Jnanotosh Bhattacharjee & Ors.
-vs-
South Dum Dum Municipality & Ors.

Mr. Biswaroop Bhattacharya
Mr. Sumitava Chakraborty
Ms. Bratati Pramanick
...for the petitioners
Mr. Kallol Bose
Mr. Soham Kumar Roy
Mr. Rahul Kumar Singh
...for the Municipality
Mr. K. M. Hossain
Mrs. Dona Sanyal
...for the State
Mr. Kushal Chatterjee
Ms. Ina Bhattacharyya
...for respondent nos.6 to 9
Mr. Ayan Banerjee
Ms. Debjani Sengupta
Ms. Paulomi Ghosh
...for respondent no.10

By filing this writ petition, the petitioners have challenged a demolition order dated August 1, 2023, issued by South Dum Dum Municipality.

On August 2, 2024, this Court restrained South Dum Dum Municipality from proceeding with the relevant demolition proceedings for a period of six weeks. The relevant part of the said order is quoted below:

“Prima facie, it appears before this Court that the petitioner, who is the landlord of the relevant premises, was not heard by the Chairperson of South Dum Dum Municipality as directed by a Co-ordinate Bench of this Court in

WPA 22428 of 2022 (Jaya Roy vs. South Dum Dum Municipality and Ors.) by an order dated September 28, 2022.

Learned advocate representing respondent nos.6 to 9 submits that the unauthorised construction may be regularised in terms of a recent Government Circular issued by the State. He further submits that a statutory appeal against the order of the demolition is pending before the Civil Judge (Junior Division), Bidhannagar Court.

In that view of the matter, the Municipality shall not proceed with the demolition proceedings for a period of six weeks from date.”

It appears that a development agreement dated February 7, 2020, was entered into between the petitioners, respondent no.11, who is the brother of the petitioners, as the landlords, and respondent nos.6 to 9, as the developers.

A G+4 construction was raised in terms of the said development agreement. The Municipality subsequently detected an unauthorised construction of about 384 sq.ft. in the building and a demolition proceeding was accordingly initiated.

I have already noted the grounds to challenge the demolition order in my order dated August 2, 2024.

Today it has been submitted by respondent no.10, the complainant at whose instance the demolition proceeding was initiated, that the petitioners executed a power of attorney in favour of respondent nos.6 to 9. She has drawn attention of this Court to the relevant parts of the said power of attorney dated February 7, 2020 which read :

“19. To file and defend suits, case, appeals and applications of whatsoever nature for and on our behalf or to be instituted preferred by or against any person or persons in respect of the said premises and also to present and proceeds writ applications in respect thereof.

20. To compromise suit appeals or other legal proceedings in any Court Tribunal or other Authority whatsoever and to sign and verify applications therefore.

21. To sign, declare and/or affirm any plaint written, statements, petition, Affidavit, Verification, Vakalatnama, appeal or any other documents or papers in any proceedings or in any way connected therewith.”

Respondent no.10 submits that since the developers were heard as the representatives of the petitioners, there was no necessity on the part of the Municipality to afford an opportunity of hearing to the petitioners in passing the demolition order.

Mr. Bhattacharya, learned advocate appearing for the petitioners submits that the power of attorney or the development agreement did not authorise the developers to represent the petitioners before the Municipal authorities relating to the alleged unauthorised construction.

I am not inclined to accept such submission. The power of attorney duly authorised the developers to represent the petitioners before the Municipal authorities relating to the relevant construction.

I am of the clear view that since all the petitioners authorised the developers to represent their case as mentioned in the power of attorney, there is no question of affording opportunity of hearing to the petitioners separately.

I am also of the view that since the appeal (Municipal Appeal No.9 of 2023) is pending before the court of learned Civil Judge (Junior Division), Bidhannagar, 24 Parganas and admittedly the learned Civil Judge by an order dated October 10, 2023, declined to pass any injunction order, by filing this writ petition, the petitioners cannot ask this Court to pass an order for injunction.

Learned advocate appearing for the developers has drawn attention of this Court to a circular dated July 27, 2023, issued by the Department of Urban Development and Municipal Affairs of the State. He

submits that the alleged unauthorised construction is liable to be regularised in terms of the said notification.

In view of the pending appeal (Municipal Appeal No.9 of 2023), I am not inclined to pass any order in this writ petition.

I make it clear that the petitioners or the developers will be at liberty to approach the learned Civil Judge in connection with Municipal Appeal No.9 of 2023 for redressal of their grievance, if any.

I make it clear that any observation made in this order should not influence the learned Civil Judge in deciding Municipal Appeal No.9 of 2023.

Accordingly, **WPA 19593 of 2024** is disposed of.

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

(Kausik Chanda, J.)