

42 21.02.2024
NB Ct. 24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(Appellate Side)

WPA 20451 of 2023

Rustom Ali
Vs.
The State of West Bengal & Ors.

Ms. Roopsa Choudhury.
..for the petitioner.

Mr. Lalit Mohan Mahata Id. AGP.,
Mr. Ziaul Haque
...for the State.

Mr. Subrata Ghosh.
...for the Municipality.

Mr. Rwitendra Banerjee,
Mr. Shibasis Chatterjee.
...for the respondent nos.6&7.

In compliance of the order passed by the Court on 6th February 2024, a spot inspection was conducted in the presence of the petitioner, the private parties, the Block Land and Land Reforms Officer and the staff of the Municipality. Measurement was taken and the municipality has opined that the land in question is a municipal land and the private respondents have occupied the same for a long time illegally by making construction thereon.

The Chairman of the municipality has passed an order of demolition of the unauthorised construction which has been made illegally over the municipal land.

The municipality has placed before this Court the record of rights to show that the land is recorded in favour of the Murshidabad Municipality.

Learned advocate representing the private respondents submits that an appeal has been preferred challenging the order of demolition before the statutory appellate forum.

An ad-interim order has been passed by the learned Civil Judge (Junior Division) Lalbagh, Murshidabad in MA 01 of 2024. The interim order is in force till 12th March, 2024.

According to the provisions of law, the Chairman of the Municipality is not the competent authority to pass an order of demolition. Power is vested with the Board of Councillors of the Municipality to pass order of demolition. The order passed by the Chairman of the Municipality directing demolition of the unauthorised construction, accordingly, has to be held as not in accordance with law.

As the municipality has already come to a considered opinion that the land in question is a municipal land, as such, the private respondents do not have any right to raise construction thereon.

Accordingly, the Municipality is directed to take necessary steps to deal with such unauthorised construction in accordance with the provisions of law after giving reasonable opportunity of hearing to all the necessary parties. All the parties will be entitled to rely upon all documents in respect of their respective stand at the time of hearing.

A decision shall be taken in the matter at the earliest, but positively within a period of two months from the date of communication of this order.

The writ petition stands disposed of.

The Chairman of the Municipality is personally present before this Court. His personal appearance is dispensed with.

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

(Amrita Sinha, J.)