

06.03.2024
Item No.12.
Court No.6.
AB

**M.A.T. 1820 of 2023
With
CAN 1 of 2023**

**Rakhi Chatterjee
Vs
Midnapur Municipality & Others**

Mr. Indranath Mitra,
Mr. Pingal Bhattacharya,
Ms. Soumita Ghoshfor the Appellant.

Mr. Nilanjan Bhattacharjee,
Mr. Saikat De,
.....for the Respondent Nos.5, 6.

Mr. Sujay Bandopadhyay,
Mr. Jagajyoti Das,
Mr. Pradipta Siddhanta
.....for the Midnapur Municipality.

By consent of the parties, the appeal and the connected application are taken up for hearing together.

By the judgment and order dated August 3, 2023, impugned in this appeal, the appellant's writ petition was disposed of by a learned Judge of this Court. Although apparently it seems that the writ petition was decided in favour of the appellant, she is obviously not happy and is, therefore, before us by way of this appeal.

The appellant/writ petitioner had earlier approached this Court by filing WPA 9457 of 2020 being aggrieved by the act of the Mednipur Municipality sanctioning a building plan in favour of

the private respondents herein. According to the appellant, such plan was sanctioned contrary to the provisions of the West Bengal Municipal Act, 1993, and the West Bengal Municipal (Building) Rules, 2007. It was submitted that the writ petitioner's representation dated September 4, 2020, made to the Municipality, was not being considered.

The learned Single Judge disposed of that writ petition by a judgment and order dated January 15, 2021, with the following observations:

“The writ petition is accordingly disposed of by directing the Board of Administrator to take a decision with regard to the representation made by the petitioner, strictly in accordance with law, within a period of ten weeks from the date of communication of a copy of this order.

The said respondent shall pass a reasoned order and communicate the same to the petitioner and all other necessary parties immediately thereafter.

It is made clear that this Court has not gone into the merits of the claim of the petitioner and all points are left open to be decided by the said respondent at the time of consideration of the representation of the petitioner.”

Pursuant to the aforesaid order, the Chairperson of the Board of Administrators of the Municipality considered the representation of the present appellant and disposed of the same by an order dated February 12, 2021. Although the Chairperson appears to have recorded certain deviations from the sanctioned plan insofar as the impugned construction is concerned, he finally concluded that the complaint is time-barred and is not tenable in law. He further observed that if

the building in question is demolished, then 22 families will suffer huge loss and major part of the building is not in the name of the private respondent i.e. Bajrang Lal Agarwal. Therefore, further action may not be taken at this stage.

Challenging the aforesaid order, the appellant approached the learned Single Judge in the present round of litigation.

It was submitted on behalf of the private respondents before the learned Judge that the building was constructed in the year 2016. The writ petitioner lodged a complaint alleging illegal construction only in the month of September, 2020. Several families are in occupation of the building. The belated writ petition should not be entertained.

Learned Advocate for the Municipality also submitted that the complaint of the writ petitioner was time-barred.

The learned Judge, however, rejected the contention of the private respondents and the Municipality. His Lordship observed that it is the duty of the Municipality under the relevant Statute to control the building operations within its limits. The learned Judge disposed of the writ petition with the following observations and directions:

“7. Learned advocate appearing for the Midnapur Municipality could not show any provision of the West Bengal Municipal Act, 1993, which provides that an illegal construction can automatically become an authorized one

with the passage of time so as to make it immune from demolition or any action in accordance with the provisions of the West Bengal Municipal Act, 1993. The Municipality having failed to detect that the construction within its limits was being carried on and has been completed in deviation and/or violation of the sanctioned building plan and/or the building rules have sought to put the blame upon the petitioner for lodging the complaint at a belated stage. The reasons for rejection of the complaint as time-barred cannot be accepted by this Court since the Midnapur Municipality is duty-bound to take steps in accordance with law once a complaint with regard to illegal construction is made before such authority. In view thereof, the impugned order dated 12th February, 2021 is set aside.

8. The Board of Councillors of Midnapur Municipality is directed to consider the complaint lodged by the petitioner on 4th September, 2020 and to dispose of the same in accordance with law after giving a reasonable opportunity of hearing to the petitioner, the private respondents and/or any other persons whose right and/or interest may be affected and/or their authorized representatives by passing a reasoned order and communicate the same to the parties immediately thereafter.

9. The entire exercise shall be completed as expeditiously as possible but positively within a period of six weeks from the date of receipt of the server copy of this order.”

Being aggrieved, the writ petitioner has come up by way of this appeal.

Mr. Pingal Bhattacharjee, learned Advocate appearing for the appellant/writ petitioner drew our attention to the order of the Municipality dated February 12, 2021, which was under challenge before the learned Single Judge. He submitted that it is clearly recorded in that order that there are deviations in the impugned construction. In that view of the

matter, the learned Judge should not have remanded the matter before the same Authority. That was not necessary.

Mr. Nilanjan Bhattacharya, learned Advocate appearing for the private respondents and Mr. Sujay Bandopadhyay, learned Advocate appearing for the Municipality apprised this Court that a notice of hearing was issued by the Municipality on September 2, 2023, pursuant to the order of the learned Single Judge fixing the meeting on September 16, 2023. On that date, the appellant herein did not appear. A further meeting was fixed on February 17, 2024. Again, the appellant did not appear. The private respondents appeared. The Chairman of the Municipality heard the private respondents and reserved the order.

We do not find any apparent infirmity in the order under appeal. We are of the view that the appellant should go and participate in the proceedings before the Chairman of the Municipality. Although the Chairman appears to have reserved order after holding two meetings wherein the appellant did not participate, we are inclined to grant an opportunity to the appellant to appear before the Chairman of the Municipality. The appellant says that she stayed away from the proceedings before the Municipality because of pendency of the present appeal.

We, therefore, direct the Chairman of the Municipality to grant a further opportunity of hearing to both the appellant and the private respondents and dispose of the representation of the appellant in accordance with law and the applicable Rules and Regulations, by passing a reasoned order, within a period of three months from date.

We make it clear that we have not gone into the merits of the disputes between the parties. The Chairman of the Municipality shall take an independent informed decision in the matter in accordance with law.

The appeal and the connected application stand disposed of.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)