

20.03.2024
Item No.10.
Court No.6.
AB

M.A.T. 2496 of 2023
With
CAN 1 of 2023

Dipankar Biswas
Vs
Sandhya Das Chowdhury & Others

Mr. Rafikul Islam Sardarfor the Appellant.

Mr. Sirsanya Bandopadhyay,
Mr. Arka Kr. Nag,
Mr. Tirthankar Deyfor the BMC.

Md. Mansoor Alam,
Ms. Suvashree Ghoshfor the State.

Mr. Amitava Ghosh,
Mr. Tapas Kr. Deyfor the Respondent No.1.

A judgment and order dated December 7, 2023, whereby the writ petition of the respondent no.1 herein, being WPA 7396 of 2023, was disposed of by a learned Judge of this Court, is the subject matter of challenge in this appeal by the respondent no.7 in the writ petition (in short “Dipankar”).

It appears that the respondent no.1 herein (in short “Sandhya”) made a complaint to the Rajarhat Gopalpur Municipality to the effect that Dipankar was making unauthorized construction on a plot of land next to Sandhya’s plot of land. Alleging inaction on the part of the Authorities, Sandhya approached a learned Judge of this Court by filing W. P. No.24571 (W) of 2014. That writ petition was disposed of by the learned

Judge by a judgment and order dated April 27, 2015, the operative portion whereof reads as follows:

“Be that as it may, instead of keeping the writ petition pending in this Court I dispose of the same by directing the Administrator of Rajarhat Gopalpur Municipality to consider the representation of the petitioner dated May 13, 2014 by a reasoned order after giving the petitioner, the concerned promoters and any other person or persons as he may think it necessary, an opportunity of being heard. He shall also communicate the decision to both the petitioner as well as the private respondents within a week thereafter. The entire exercise, however, is to be completed within a period of four weeks from the date of communication of the order.

It is made clear that if the Administrator is of the opinion that the grievance of the writ petitioner is genuine he shall also pass necessary and consequential orders in accordance with law.”

In June, 2015, Bidhannagar Municipality and Rajarhat Gopalpur Municipality merged to form the Bidhannagar Municipal Corporation (in short “BMC”). There was delay on the part of the BMC to carry out the learned Judge’s order dated April 27, 2015. However, even though belatedly, ultimately an order was passed by BMC, which was communicated to the parties vide Memo dated July 26, 2019. The order was for removal of unauthorized construction by the appellant herein.

Challenging the demolition order, the appellant herein approached a learned Judge of this Court by filing WPA 15388 of 2019. That writ petition was disposed of by an order dated June 30, 2022, which reads as follows:

“The petitioner is aggrieved by the reasoned order passed by the Commissioner, Bidhannagar Municipal Corporation communicated to the petitioner vide Memo No. BMC/GS/2019/1425 dated 26th July, 2019.

By the said order, the petitioner has been directed to remove the construction which has been erected without the sanction plan within four weeks from the date of receipt of this order.

The order impugned is an appealable one.

Without going into the merits of the order impugned, the writ petition is disposed of.

It will be open for the petitioner to apply before the appropriate forum in accordance with law, if so advised.”

We are told that no appeal has been preferred from the aforesaid order of the learned Single Judge. However, an application for review has been filed by Dipankar for review of the order dated 30.06.2022 being RVW 285 of 2023.

In the meantime, Sandhya approached a learned Single Judge of this Court by filing WPA 7396 of 2023 for implementation of the reasoned order of demolition passed by BMC. The learned Judge disposed of the writ petition directing BMC to take prompt necessary steps for implementing the order of demolition, noting that as on date, there is no order of any competent Court staying/varying or vacating the demolition order.

Being aggrieved, the respondent no.7 in the writ petition has come up by way of this appeal.

We have heard learned Counsel for the parties. Learned Advocate for the appellant requested us to adjourn this matter till disposal of the review

application filed by Dipankar. We are afraid we are unable to accede to such request. The appellant may keep the review application pending for an indefinite period of time. He has not been able to obtain any interim protective order in that application. Mere pendency of the review application, in our opinion, could not be a ground for adjourning the present matter.

We find no infirmity in the order under appeal. The learned Judge has rightly observed that the demolition order has not been interfered with by any competent forum. Hence, there was no error on the part of the learned Judge in directing implementation of the demolition order.

The appeal and the connected application, accordingly, fail and are dismissed.

Since no affidavit has been called for, the allegations made in the stay petition 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.)

