

Item No.49

19.03.2024
Ct-24

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 28970 of 2023
Mr. Abdul Rouff

v.

The Kharagpur Municipality & Ors.

Mr. Supratik Roy
Mr. Shuvajit Roy
... for the petitioner.

Mr. Mrinal Kanti Ghosh
... for the Municipality.

A patently illegal construction in respect of which order of demolition was passed in the year 2011 has not been demolished till date despite orders passed by this Court from time to time.

Learned advocate representing the Municipality submits that as an appeal is pending consideration before this Court, accordingly, the Municipality chose not to take steps in compliance of the direction passed by the Hon'ble Single Judge.

From the case status details available in the official website of this Court it appears that an appeal was preferred in December 2018 which stood dismissed for default on February 8, 2022. The said appeal is yet to be restored.

The Municipality, for reasons best known to them, did not take steps to conclude the proceeding initiated under Section 218 of the West Bengal Municipal Act, 1993.

Learned advocate for the Municipality submits that the Municipality fixed dates for hearing of the Section 218 proceeding, but because of the pendency of the appeal, final order has not been passed.

The stand of the Municipality appears to be very improper. Mere pendency of an appeal never acts as stay of the order from which appeal has been preferred.

Because of the inaction on the part of the Municipality, the unauthorized construction is standing for more than a decade. The Municipality ought to have taken steps in a proactive manner to ensure that the unauthorized construction is appropriately dealt with in proper time. The Municipality ought not to have sat idle with the matter without concluding the same in accordance the law.

Learned advocate for the private respondent submits that the construction in question is in place for a long time. The private respondent ought not to be directed to demolish the same at this stage.

I am of the opinion that the Section 218 proceeding which is pending is to be disposed of immediately without any further delay.

The Municipality is, accordingly, directed to conclude the proceeding at the earliest but positively by April 30, 2024. The final order in the aforesaid proceeding shall be communicated to the parties immediately upon conclusion of the same.

Affidavit-in-opposition filed on behalf of the respondent no. 5 be retained with the records.

The writ petition stands disposed of.

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

Sh

(Amrita Sinha, J.)