

30.01.2025
Item No.11
PG/KS
Ct. No.1

W.P.A. (P) 200 of 2024
Dilip Dey & Ors.
Versus
The State of West Bengal & Ors.

Mr. Timir Baran Saha
.....For the Petitioners
Mr. Jahar Lal De, Ld. A.G.P.
Mr. Shamim Ul Bari
.....For the State
Mr. Soumyajit Bhatta
.....For the Respondent Nos.2 to 4
Mr. Sakya Sen, Sr. Adv.
Mr. Sunil Kr. Gupta
.....For the Respondent No.8
Mr. N. C. Bihani
Mr. Moulinath Moitra
.....For the W.B.P.C.B.

1. This public interest litigation has been filed calling upon the respondents to remove a mobile tower, which has been erected in a building owned by the private respondents.
2. The tower has been erected by the respondent no.8/company. A direction was issued by this Court on 20th June, 2024, the operative portion of which reads as follows:-

“6. In order to get a clear factual feature, there will be a direction to the Executive Officer, Panihati Municipality to inspect the mobile tower in question and ascertain as to whether structural stability certificate has been obtained by the person who has installed the tower and after collecting all details submit a report before this court within a period of three weeks from date.”

3. In terms of the above direction, the Executive Officer of the Panihati Municipality has inspected the building. Amongst other things he stated that the building has a sanctioned plan for G+ 1 floor vide a sanction order dated 18th March, 2011 but, there is no sanction or any approval obtained from the Municipality with regard to the 2nd floor but 2nd floor has

been constructed without obtaining sanction plan and as on date, the building consists of G+2 storey i.e. 3 storied building. The mobile tower has been installed on top of the 2nd floor.

4. The learned senior advocate appearing for the mobile tower company has drawn our attention to a proceeding of the Chairman of the Panihati Municipality dated 29th September, 2023 and submitted that there is no allegation that the building is without a sanction plan.
5. On a careful reading of the said proceeding it shows that there is a reference to the sanctioned plan dated 18th March, 2011, but there is no specific reference as to whether the construction, which is at present in existence is in accordance with the sanctioned plan.
6. Pursuant to our order dated 20th June, 2024 and the directions issued therein, quoted above, inspection has been conducted and in no uncertain terms it has been stated that there is no sanctioned plan for the 2nd floor. Therefore, until and unless, the sanction is obtained for the 2nd floor, the 2nd floor construction is unauthorized and consequently, the mobile tower company could not have erected a tower on top of the 2nd floor.
7. Therefore, we direct the Municipality to issue notice to the owner of the premises as well as the mobile tower company so as to give them a reasonable time to dismantle the tower and also to the owner of the building to apply for sanction of the 2nd floor and if such application is made, the Municipality shall consider the same in accordance with the relevant statute and regulations.

8. Needless to state that pursuant to such notice, the owner of the building as well as the mobile tower company are at liberty to produce documents to establish that there is no violation.
9. The above direction be complied with within a period of two weeks from the date of receipt of server copy of this order.
10. With the above observations/directions, writ petition stands disposed of.
11. No costs.
12. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)