

Sanatan Das Vs. State and ors.

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Court : Kolkata

Decided On : Aug-22-2000

Reported in : AIR2001Cal67

Judge : D.K. Seth, J.

Acts : [Municipal Act, 1993](#) - Sections 218, 200(1) and 220

Appeal No. : A.S.T. 2910 of 2000

Appellant : Sanatan Das

Respondent : State and ors.

Advocate for Def. : D.N. Bose, ;Fazlul Haque, Advs. for Opp. Party 1 and ;D.K. Mukherjee and ;Ujjal Kr. Datta, Advs. for Opp. Party 2

Advocate for Pet/Ap. : Dhillan Sarkar, Adv.

Judgement :
ORDER

D.K. Seth, J.

1. A notice under Section 220(1) has since been issued against the petitioner on the allegation that he had deviated from the sanctioned plan. The petitioner had submitted his reply. It is contended by the petitioner that the Municipality has not

taken any steps in that regard. The learned Counsel appearing for the petitioner therefore prays that either the notice be quashed or the Municipality may determine the question as to the deviation and then permit the petitioner to proceed further in accordance with law. He had also certain allegation against the respondent No. 6, the private respondent.

2. The learned Counsel for the respondent Municipality on the other hand contends that it appears that the petitioner has deviated from the sanctioned plan and therefore the notice has been rightly issued.

3. I have heard the learned Counsel appearing for the parties at length.

4. The respondent No. 6 could not be served. Be that as it may it is not necessary to serve on the respondent No. 6 in view of the order that I am proposing to pass. In any way this will not prejudice the respondent No. 6.

5. Sub-section (1) of Section 220 of the West Bengal [Municipal Act, 1993](#), empowers the Chairman of the Municipality to stop construction forthwith pending further proceeding in respect of any unauthorised construction. Section 220 does not proceed further. It only deals with a stoppage of construction. It does not provide for any procedure for deciding the dispute as to whether the construction is unauthorised or not, if it is so contended by the petitioner at whose instigation the construction is being carried on.

6. At the same time the Section 218 provides that any construction which is made without sanctioned plan or any deviation of the sanctioned plan are required to be demolished, prescribing the procedure therefore which includes giving of an opportunity to the person aggrieved as well as notice. In case any proceeding under Section 218 is initiated in that event the stop work may continue indefinitely jeopardise the interest of the petitioner. Thus if within reasonable time any proceeding under Section 218 is not initiated by the Municipality in that event, it would be open to the petitioner to apply for recalling or rescind the order under Section 220(1) in view of the provision contained under Section 122 of the Bengal General Clauses Act which provides that power to issue order includes power to rescind or recall or modify or amended the order. In the present case, the

petitioner has already made an application, in case the Municipality does not propose to resort the Section 218, in that event it must deal with and dispose of the petitioner's representation and decide the question in accordance with law. If there is any unauthorised construction or deviation from the sanctioned plan in that event it is open to the Municipality to resort the Section 218. If there is no such deviation as may be or if found by the Municipality on inspection or enquiry, in that event, it may permit the construction by withdrawing the stop work notice. It may also required the petitioner to demolish if there is any unauthorised construction as may be found by the Municipality. In case a proceeding under Section 218 is resorted to in that event the same may be concluded as early as possible preferably within a period of 3 months from the date of such initiation. In case no proceeding under Section 218 is initiated within 2 weeks from the date of production of the certified copy of this order in that event it would dispose of the petitioner's representation within a period 4 weeks from the date of production of such certified copy.

7. Let it be noted that I have not entered into the merits of the case. But at the same time if the petitioner has any grievance against the respondent No. 6, private respondent, he may proceed against him in the Civil Court, as he may be advised.

8. So far as the determination of the question between the Municipality and the petitioner is concerned, the respondent no. 6 may also be given an opportunity to present his case in the proceeding. The Municipality shall determine the question in accordance with law having regard to provisions contained in Section 218 of the said Act.

9. Thus the writ petition is dispose of without any order as to costs.

10. Liberty to take down the gist of this order is given to the petitioner for communication.