

Constitutional Writ

Present : The Hon'ble Mr Justice Jayanta Kumar Biswas

Judgment on : June 7, 2010

W.P.No.17377(W) of 2003

Sri Uttam Samanta & Ors.

-vs-

The State of West Bengal & Ors.

POINTS

Unauthorised Construction – Complain by the petitioner – Unauthorised construction case registered on the basis thereof – Case disposed of by the chairman of the municipality – Chairman of the municipality whether can make final order in case of unauthorised construction – West Bengal Municipal Act, 1993, S 14, 15, & 218.

FACTS:-

The petitioners in this art.226 petition dated November 7, 2003 are questioning a decision of the Chairman, Haldia Municipality dated September 15, 2003, Annexure P7 at p.43, presumably disposing of the Unauthorised Construction Case registered on the basis of their complaint dated March 7, 2002, Annexure P3 at p.29.

In their complaint the petitioners alleged that the sixth respondent, Sakti Pada Pramanik, erected unauthorised constructions using a plot adjacent to their plot. Alleging that the Municipality did not take steps in the discharge of its statutory duty they moved W.P.No.7411(W) of 2002 under art.226. It was disposed of by an order dated June 25, 2002 directing the Municipal Authority to dispose of the proceedings making a reasoned order. Thereupon the Chairman of the Municipality issued a notice dated September 12, 2002 fixing September 23, 2002 for hearing of the matter by the Chairman-in-Council. Finally the Chairman gave the impugned decision.

The questions are whether the Chairman-in-Council was empowered to hear the matter, and whether the Chairman of the Municipality was empowered to make the final order in the Unauthorised Construction Case.

HELD :-

An Unauthorised Construction Case registered on the basis of a complaint is to be decided according to the provisions of s.218 of the West Bengal Municipal Act, 1993. Section 218 empowers only the Board of Councillors to decide the case and an appeal against an order of the Board of Councillors can be filed in the Court having jurisdiction.

Para 4

Under sub-s.(5) of s.218 the Chairman-in-Council can exercise limited power when immediate action is necessary for stopping work or demolishing an unauthorised construction. As provided by ss. 14 and 15 of the Act the Board of Councillors and the Chairman-in-Council are two separate authorities. Hence the power conferred on the Board of Councillors cannot be exercised by the Chairman-in-Council. The powers of the Board of Councillors available under s.218 could not be exercised by the Chairman-in-Council and the Chairman of the Municipality.

Para 5

Here it is the admitted position that the Unauthorised Construction Case was heard by the Chairman-in-Council and the final decision, presumably disposing of the Unauthorised Construction Case, was given by the Chairman of the Municipality. Both the authorities acted without jurisdiction. The Chairman-in-Council could not hear the case, in law to be heard only by the Board of Councillors, and the Chairman could not give the final decision in the case, because only the Board of Councillors was empowered to give the final decision.

Para 6

Mr. A.B. Chatterjee
Mr. Satyajit Mondal
Mr. Gautam Sahu For The Petitioners

Mr. D.P. Adhikari
Mr. Jibanhari Mallick For The Sixth Respondent

Mr. S.M. Hassan For Haldia Municipality

THE COURT : 1)The petitioners in this art.226 petition dated November 7, 2003 are questioning a decision of the Chairman, Haldia Municipality dated September 15, 2003, Annexure P7 at p.43, presumably disposing of the Unauthorised Construction Case registered on the basis of their complaint dated March 7, 2002, Annexure P3 at p.29.

2)In their complaint the petitioners alleged that the sixth respondent, Sakti Pada Pramanik, erected unauthorised constructions using a plot adjacent to their plot. Alleging that the Municipality did not take steps in the discharge of its statutory duty they moved W.P.No.7411(W) of 2002 under art.226. It was disposed of by an order dated June 25, 2002 directing the Municipal Authority to dispose of the proceedings making a reasoned order. Thereupon the Chairman of the Municipality issued a notice dated September 12, 2002 fixing September 23, 2002 for hearing of the matter by the Chairman-in-Council. Finally the Chairman gave the impugned decision.

3)The questions are whether the Chairman-in-Council was empowered to hear the matter, and whether the Chairman of the Municipality was empowered to make the final order in the Unauthorised Construction Case.

4)An Unauthorised Construction Case registered on the basis of a complaint is to be decided according to the provisions of s.218 of the West Bengal Municipal Act, 1993. Section 218 empowers only the Board of Councillors to decide the case and an appeal against an order of the Board of Councillors can be filed in the Court having jurisdiction.

5)Under sub-s.(5) of s.218 the Chairman-in-Council can exercise limited power when immediate action is necessary for stopping work or demolishing an unauthorised construction. As provided by ss. 14 and 15 of the Act the Board of Councillors and the Chairman-in-Council are two separate authorities. Hence the power conferred on the Board of Councillors cannot be exercised by the Chairman-in-Council. I am, therefore, of the view that the powers of the Board of Councillors available under s.218 could not be exercised by the Chairman-in- Council and the Chairman of the Municipality.

6) Here it is the admitted position that the Unauthorised Construction Case was heard by the Chairman-in-Council and the final decision, presumably disposing of the Unauthorised Construction Case, was given by the Chairman of the Municipality. In my opinion, both the authorities acted without jurisdiction. The Chairman-in-Council could not hear the case, in law to be heard only by the Board of Councillors, and the Chairman could not give the final decision in the case, because only the Board of Councillors was empowered to give the final decision. I am, therefore, of the view that the impugned decision is liable to be set aside.

7) For these reasons, I allow the petition, set aside the impugned decision dated September 15, 2003, quash everything connected with the decision and order as follows.

8) The Unauthorised Construction Case registered under s.218 on the basis of the petitioners' complaint dated March 7, 2002 shall be decided by the Board of Councillors of the Municipality within ten weeks from the date of communication of this order. The Board shall make necessary enquiry and give the parties opportunity to adduce evidence in support of their respective cases and also of hearing. The reasoned decision shall be communicated to all at once. No costs. Certified xerox.

(Jayanta Kumar Biswas, J)

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