

03 24.02.2021

Ct. No. 02

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M.A.T. 70 of 2020

With

CAN 2 of 2021

***Nemai Chandra Kundu & Ors.
Vs.
The State of West Bengal & Ors.***

**Mr. Bibek Jyoti Basu,
Mr. Uttam Kumar De,
Ms. Jamuna Saha.**

... for the appellants.

Mr. Suddhadev Adak.

... for the Municipality.

Mr. Debasish Banerjee.

**... for the applicant in
CAN 2 of 2021.**

The appellants are beleaguered with the misconception of facts and distortion appears to have been projected in their mind in assailing the order passed by the learned Single Judge disposing of the writ petition.

The first attack is made to the impugned order that the learned Judge have exceeded in discharging of his duties in taking into account the extraneous factors without travelling on the circumference of the relief claimed in the writ petition.

According to Mr. Bibek Jyoti Basu, learned Advocate appearing for the appellants, the writ petition was filed simplicitor for a direction upon the Municipal Authorities to consider the representation/prayer for renewal/extension of the sanctioned building plan granted in favour of the appellants and in absence of any proceeding having launched against the appellants, the learned Single Judge was not justified in rejecting and/or refusing such relief, which appears to be formal and innocuous.

At the first blush, this submission advanced before us in usual eloquence of Mr. Basu appears attractive, but the moment we go deeper into the papers annexed to the application for stay, we feel that the matter is required to be considered on the peripheral of those documents and the orders and judgements passed in several proceedings initiated by the appellants.

Indubitably, an application for sanction of the building plan in respect of the subject property in dispute was granted by the Board of Councillors of the Municipality and the trouble starts thereafter. A notice was issued on 23rd October, 2017 under Section 218 (1) of the West Bengal Municipal Act, 1993 (hereinafter referred to as 'said Act'), which shocks the conscience of the appellants and the aforesaid fact was brought to the notice of the Court where the writ petition was pending on some other issues.

Amidst the pendency of the said application as well as the earlier writ petition another notice was issued on 26th December, 2017 and the said factum was again brought to the notice of the Court in the aforesaid pending writ petition. The said writ petition got disposed of on 9th March, 2018 with the following observations:

“After considering the submissions made on behalf of the parties this Court holds that in support of prayer (a) the only pleading that has been made by the writ petitioner is that of plantation of saplings on his land which could not be substantiated even after consideration of the learned Special Officer’s report and, therefore, prayer (a) cannot be granted. Only substance which makes a basis for interference of this Court if the notice dated 26th December, 2017 by which the alleged sanction plan has been sought to be revoked by the Municipality. Although, Mr. De is right in making the submission that without making amendment of the writ petition simply by

filing an application the petitioners cannot seek quashing of the notice dated 26th December, 2017 which according to him, would be misjoinder of causes of action. Although, Civil Procedure Code is not applicable in writ proceedings, yet, the principles apply. The notice dated 26th December, 2017 at page 18 of C.A.N. 186 of 2018 gives some cause of action for the writ petitioner for which he is entitled to get some relief. The said notice is opposed to the principles of natural justice and, therefore, the writ petitioner at least should get an opportunity to place his case before the Municipal authority and, accordingly, this writ petition along with all connected applications stand disposed of with the direction that the Executive Officer, Arambagh Municipality shall give an opportunity of hearing to the petitioner on the question of the restriction upon the petitioner to make construction on the basis of the plan said to have been issued in his favour. Such hearing should be given within a period of eight weeks from the date of communication of this order. The petitioner is directed to communicate this order to the Municipality within a week from obtaining a certified copy of this order.

Since Arambagh Municipality had already issued a notice dated 23rd October, 2017 as disclosed in C.A.N. 10034 of 2017 whereby the petitioner was directed to show cause which he could not do because of the pendency of the writ petition, he is given liberty to file a reply to such show-cause notice to the Municipality within a period of two weeks from date.”

The observations recorded in the said writ petition have taken front seat and assumes the sheet anchor of the reasons dismissing the instant writ petition by the learned Single Judge. The observations recorded in the first writ petition became the centre of debate, as Mr. Basu is not *ad idem* to the interpretation of the notices having issued by the Municipality, which ought to have been held otherwise.

According to Mr. Basu, the notice dated 26th December, 2017 is explicit, clear and exposes the intention of the Municipality that they intended to

stop the ongoing construction work and can never be imagined or construed as a notice under Section 217 of the said Act. It is further submitted that if the finding has been wrongly recorded in an earlier proceeding, such finding cannot act as a deterrent to his clients and there is no obstacle on the part of the Court in a subsequent proceeding to construe such notice otherwise than what was construed at one point of time.

We are amazed, surprised and unable to accept such proposition. A document has been filed before the Court and the findings are made by interpreting the contents thereof. Such findings would not only bind the parties, but in all subsequent proceedings and unless such findings appear to be palpably illegal and manifestly contrary to the intention of the author of such document. If the document is capable of being construed in more than one way and if either of such has chosen by the Court while interpreting the document, even if the Appellate Court thinks that the other interpretation is possible, shall not interfere with such interpretation provided the interpretation given by the Court shocks the conscience and runs contrary to the language manifestly used therein.

The position would have been different, when the documents can only be construed and interpreted in only one way and if it has been construed otherwise, there is no fetter on the part of the Court to take different stand, as the wrong apparent on the record cannot be allowed to be perpetrated throughout the proceedings. It is not a case of such nature, though Mr. Basu's clients have understood the content of the notice dated 26th December, 2017 as a stop work notice, but the

learned Judge has interpreted the contents of the said notice to be a notice for revocation of the sanctioned building plan and such power emanates from Section 217 of the said Act.

The reason for recording the same is that an objection was received by the Municipality from a third party claiming their right, title and interest over the said plot of land and the Municipality on the basis of such complaint took shelter under Section 217 of the said Act treating the statements made in the application for first sanction to have based upon the misrepresentation and invited the appellants to participate in the said proceeding. If the notice has been construed not as a stop work notice but a notice to revoke the sanctioned building plan, it is not open to the appellants to contend otherwise until and unless such finding made in the earlier proceeding stares at them and not upset and/or disturb by a validly instituted proceeding. We, therefore, cannot concur with the interpretation with such notice otherwise than what has been dealt in an earlier writ petition as quoted above.

Taking another plea of Mr. Basu that the Court has travelled beyond the relief claimed in the writ petition, we find that the relief was restricted to the renewal/extension of the original sanctioned building plan based upon the allegation that despite having received the requisite fees and the application, the authorities are keeping the same in suspended animation in not taking any decision thereupon.

Our attention is drawn to Section 211 of the said Act providing the extension of the period of the sanctioned building plan subject to the incidents made therein to have arisen. According to Mr. Basu, once the application for renewal/extension is made,

there was no occasion for the learned Single Judge to travel beyond the scope of the relief and, therefore, the order needs to be interfered with and a direction may be passed upon the Municipal Authorities, competent enough to decide the prayer for renewal/extension, to decide the same within a time frame.

The expression “renewal and extension” appears to have been intermingled to achieve the same object. So far as the expression “renewal” is concerned, it connotes re-meaning again and renewal afresh. Etymologically “renewal” means a fresh grant. However, the “extension” stands on a different pedestal. The extension cannot be conceived without the existence of a prior permission. The extension means stretching out, arising from and/or flowing from something in existence which may have lost upon an expiration of the tenure/period.

Therefore, in order to achieve the object of the extension, there must be an existence of a previous permission and/or sanction without which such word would lose its applicability. If the original permission/sanction has been found by the authority to have obtained on a misrepresentation and our attention is drawn to a subsequent order passed by the competent authority on 26th August, 2019; whereby and whereunder the authority has recorded that there appears to be a dispute on the ownership of the disputed property and the person claiming rightful title therein has submitted various documents including the judgement of the Civil Court, the CS and RS Record of Rights.

We notice that the aforesaid date was fixed for hearing in terms of an earlier order dated 9th March, 2018 and the appellants chose not to participate in

the proceeding because the aforesaid date was fixed beyond the stipulated time reserved therein and the application for contempt is pending before this Court. Subsequently another application was filed on 2nd January, 2019 with a prayer to recall/revisit and/or withdraw the order withholding the construction plan by the undersigned wide communication dated 16th December, 2017 passed by the Executive Officer, Arambagh Municipality. By the said order the Executive Officer of the said Municipality rejected the said prayer and has categorically observed that since a serious dispute over the ownership has been raised, the said dispute is made patent subsequent to the sanction of the building plan and prayer so made cannot be acceded to and the same is hereby rejected.

What can be reasonably inferred from the observations recorded in the said order, which has not been challenged by the appellants, in a validly instituted proceeding that the objection put forth against the writ petitioners was taken note of and since it strikes at the root of the decision taken at the time of sanctioning the building plan, no further order either of the renewal/extension or otherwise has been passed. Logically what can be inferred from the said order that the sanctioned building plan is no more in existence and there has been a serious dispute on the ownership claimed by the writ petitioners. If such decision has been taken and still operative, the question of renewal/extension of the non-est sanctioned building plan does not arise at all. If the plan has not been found to be alive as on the date, such plan cannot be extended, as it comes within the mischief of the provisions of the said Act.

Mr. Basu further submits that there is no

proceeding initiated under Section 217 of the said Act. As discussed above and noted in the earlier order passed in the writ petition, a direction was passed upon the authority to provide an opportunity of hearing to the notice dated 26th December, 2017. The Court interpreted such notice as a notice to revoke the earlier sanctioned building plan. If the proceeding has been initiated, may be belatedly, it would not fall good from the appellants that such proceeding is not initiated under Section 217 of the said Act as we do not find any other provision except Section 217 of the said Act for revocation of the building plan already sanctioned by the Municipal Authorities. Accordingly, such contention fails.

Since the sanctioned building plan has not been found to be legal, there is no question of extension of the illegal things and, therefore, we do not find any infirmity in the order of the learned Single Judge.

The instant appeal is accordingly dismissed.

In view of the dismissal of the appeal itself, the connected application being CAN 2 of 2021 has become infructuous and the same is accordingly dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties within a week from date.

(Harish Tandon, J.)

(Kausik Chanda, J.)

