

S/L 6
14.07.2021
Court. No. 19
GB

W.P.A. 10991 of 2021

Asoke Basu @ Ashoke Basu Anr.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

*Mr. Arindam Sen,
Ms. Rinku Sen,
Ms. Mithu Sardar,
Md. Sahinruzamnan.*

...for the Petitioners.

*Mr. Billwadal Bhattacharya,
Mr. Anish Kumar Mukherjee*

...for the Respondent Nos.3 to 7.

*Mr. Devajyoti Barman,
Ms. Sanjukta Basu Mallick.*

...for the Respondent Nos.8 & 9.

*Mr. Jayanta Narayan Chatterjee,
Mr. Debasis Banerjee,
Mr. Nazir Ahmed.*

...for the Respondent Nos.10 & 11.

*Mr. Sandeep Prasad Shaw,
Ms. Priyanka Gupta,
Ms. Ilika Patra.*

...for the Respondent Nos.14 & 15.

*Mr. Debjit Mukherjee,
Mrs. Sujata Ghosh.*

...for the State.

Affidavit-of-service is taken on record.

The writ petition has been filed challenging a notice issued by the Chief Architect, New Town Kolkata Development Authority (NKDA) dated June 28, 2021. By the said notice the NKDA has directed the petitioners to demolish/dismantle the portion marked in Red in the

drawing/plan annexed to the notice, indicating the illegal construction carried out by the petitioners.

It is submitted that a temporary rain shed had been constructed and the said construction was done on the basis of the clauses in the deed of conveyance entered into between the petitioners and the NBCC India Limited (Builder). It is submitted that similar rain sheds have been constructed by other shop owners.

Mr. Bhattacharya, learned advocate appearing on behalf of the NKDA, submits that the NKDA under Section 82 of the NKDA Act, 2007 had the power to remove any unauthorized sheds constructed by the shop owners and other persons in the locality. A notice of dismantling/demolishing had been served upon the petitioners earlier but the said notice being devoid of specifications as to the nature of illegal construction, had been set aside by this Court granting liberty to the NKDA to issue a fresh notice clearly specifying the illegal construction. Pursuant to the leave granted by this Court, the impugned notice has been issued. In the impugned notice, the nature of unauthorized construction/deviation from the sanction plan has been indicated and a plan has been annexed to the said notice indicating the nature and extent of the unauthorized construction of the rain shed.

The learned advocate appearing on behalf of NBCC submits that NBCC India Limited had already made their stand clear by issuing a letter to the petitioner. It has been

stated that the rain shed mentioned in Clause 4.8 of the deed was incorporated by the purchasers and by mistake the same was over looked by the Builder. That NBCC India Limited did not permit or authorize any shop owner to make any unauthorized construction on the footpath.

Mr. Debasish Banerjee, learned Advocate for the NBCC Vibgor owner's association submits that the petitioners could not have constructed the shed in violation of the plan and the flat owners could not allow such illegality at the instance of the shop owners.

It is further submitted by the learned advocate for the State that NKDA was within its authority to issue the notice as mentioned hereinabove.

Mr. Bhattacharya submitted that in exercise of powers conferred under Section 82(4) of the NKDA Act, 2007 an emergent measure/step can be taken as the unauthorized construction of the shed falls on the common footpath used by the pedestrian.

However, the provision contemplates that the authority must be satisfied and record reasons for exercising such emergent powers. The notice does not indicate the satisfaction of the authority.

Although the law is very clear that no unauthorized construction can be allowed to stand and the Court should take serious judicial notice of such deviation and unauthorized erection but in my view, one opportunity of

hearing should be given to the petitioner in terms of the provisions of the NKDA Act which is quoted below:-

“82. (1) If the Development Authority is satisfied that-

(a) the erection of any building-

(i) has been commenced without obtaining sanction or permission under this Act, or

(ii) is being carried on or has been completed otherwise than in accordance with the sanction accorded, or the permission granted, under this Act, or after such sanction or permission has been lawfully withdrawn, or

(iii) is being carried on, or has been completed in contravention of any provision of this Act or the rules or the regulations made thereunder, or

(b) any building or projection exists in violation of any condition, direction or requisition under any provision of this Act or the rules or the regulations made thereunder, or

(c) any material alteration of, or addition to, any building has been commenced, or is being carried on, or has been completed, in breach of any provision of this Act or the rules or the regulations made thereunder,

it may, after giving the owner of the building a reasonable opportunity of being heard, make an order directing that such erection, alteration, addition or projection, as the case may be, or so much thereof as has been executed unlawfully, may be demolished or altered, and, upon such order, it shall be the duty of the owner to cause such demolition or alteration to the satisfaction of the Development Authority within such period as may be specified in the order, and, in default, such erection, alteration, addition or projection, or alteration or addition, as the case may be, may be demolished or altered by the Development Authority at the expense of the owner.

(2) The procedure relating to the opportunity of hearing to be given to the owner under sub-section (1) shall be such as may be prescribed.

(3) An appeal against an order under sub-section (1) shall lie with the court having jurisdiction.

(4) Notwithstanding anything contained in the foregoing provisions of this section or elsewhere in this Chapter, if the Development Authority is of opinion that immediate action is necessary in respect of any building being constructed or any work being carried on, in contravention of the provisions of this Act, it may for reasons to be recorded in writing, cause such building or work to be demolished forthwith.”

The Court should have zero tolerance for any unauthorized construction over any common area used by the people of the locality but the provisions of natural justice must be followed.

Under such circumstances, the writ petition is disposed of directing the petitioners to appear before the Chief Architect, New Town Kolkata Development authority along with a written submission in support of their contentions within July 16, 2021. The Chief Architect, New Town Kolkata Development authority shall call for a hearing. The petitioners, representatives of NBCC India Limited, the Secretary of the NBCC owners association and any other person, who may be affected by any order passed by the authority concerned shall be heard. A reasoned order should be passed in accordance with the Act and Rules prescribed thereunder and communicated to all concerned within a week from receipt of the application of the petitioners. The decision of the Chief Architect, New Town Kolkata Development authority shall be final. Till the decision is arrived at, the notice impugned shall be inoperative. The decision of the Chief Architect, New Town Kolkata Development authority is only restricted to the allegation of unauthorized construction of the rain shed on the passage, which is used by the pedestrian and has been allegedly constructed in deviation from the sanctioned plan. The NKDA authorities shall act in accordance with law if it is found that the rain shed was unauthorized.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)