

21.02.2022
Court. No. 19
Item no. 12
Cp

WPA 2084 of 2022

Abdul Rahaman Molla
Vs.
The Maheshtala Municipality & Ors.

Mr. Debanik Banerjee
Mr. Mainak Swarnokar
Md. Ghalib Rizwan
Mr. A. ganguly

... for the Petitioners.

Mr. R. N. Chakraborty
Mr. M. Ahmed

... for the municipality.

Mr. Kallol Basu
Mr. Debjit Mukherjee
Mr. Suman Banerjee

.....for the respondent No. 5.

The writ petition has been filed challenging an order passed by the authority under Section 218(3) of the West Bengal Municipal Act, 1993. According to the petitioner, the appeal was disposed of without consideration of the grounds raised by the petitioner in the Memorandum of Appeal. The first of such grounds being that the demolition order was passed in violation of the principles of natural justice and the second ground being that an opportunity was not given to the petitioner to retain the unauthorised portion.

It is contended by the petitioner that the learned court below ought to have recorded the reasons and

findings in its order, while dismissing the appeal of the petitioner, filed against the demolition order. The reasons as to why the court was of the opinion that the contentions of the petitioner were not acceptable and further why the court thought that the order of demolition had been issued upon consideration of all probable submissions and documents, are absent in the order.

Mr. Bose, learned advocate appearing on behalf of the respondent no. 5, submits that the appellate authority arrived at the decision upon considering the entire facts and also the applicable law. He points out to the relevant paragraphs of the order impugned to show that the court was of the view that the petitioner was afforded an opportunity of hearing. That the petitioner failed to submit the sanction plan on the basis of which the two-storeyed building had been constructed. The court also relied on the documents produced before it by way of evidence and held that the municipal authorities upon inspection had found that huge construction had been made without any sanction plan. The contention of the petitioner that the alleged construction was only addition, alteration and reconstruction of the damaged portion of the house, was not accepted.

Heard the parties. The demolition order dated January 28, 2022 was challenged before this court on the grounds of violation of the principles of natural justice. This court held that the order of demolition being an appealable order, the petitioner must exhaust his remedies under the statutory provisions. An interim stay of six weeks was granted to the petitioner protecting his property, by this court and, thereafter, the order of demolition was made subject to the result of the appeal to be filed by the petitioner.

It appears that the petitioner filed an appeal beyond the period fixed by the court. It also appears from the demolition order that the petitioner was called for a hearing and the petitioner could not show any documents in support of the construction of a two-storeyed building. The petitioner could not show any sanctioned building plan. Thus, the authorities finding no other alternative ordered demolition of the totally illegal and unauthorized construction, and passed necessary orders asking the petitioners to demolish the property. Failing which, the authorities reserved the right to demolish the same. The appellate authority disposed of the appeal along with the stay application, on the consent of the parties. The entire facts before the learned court below have been discussed in detail. The petitioner's contentions have been taken note of.

The first contention of the petitioner that the demolition order was passed in violation of the principles of natural justice was negated. The records reveal that the petitioner was present during the hearing before the municipality. The learned court below also found that the municipal authorities had not infringed or violated any law governing the issue. The rules and the provisions of West Bengal Municipal Act, 1993 had been followed. The court also arrived at a finding that in view of the extent of the illegality committed by the petitioner by making huge constructions, totally in the absence of any plan, further hearing in the demolition case, would not improve the petitioner's situation.

It is settled law that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

The petitioner has not made any allegations of procedural irregularities. Undoubtedly, the petitioner was called for a hearing before the demolition order was passed. The petitioner could not produce any

documents in support of the construction. Thus further hearing even if granted to the petitioner, would be an empty formality.

Even if the order is not as elaborate and as detailed as the petitioner would have liked it to be, the conclusion of the learned court below is correct. It is an admitted position that the petitioner has constructed a two-storeyed building without any sanction plan. Under such situation, the petitioner would not benefit from any further protraction of the litigation.

In the matter of ***Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn.***, reported in ***(2021) 10 SCC 1***, the Hon'ble Apex Court held as follows:-

“159. The rampant increase in unauthorised constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities.

160. From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate

the constant influx of people, it has to be balanced with two crucial considerations — the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law.

162. In *K. Ramadas Shenoy v. Town Municipal Council, Udipi* [*K. Ramadas Shenoy v. Town Municipal Council, Udipi*, (1974) 2 SCC 506], A.N. Ray, C.J. speaking for a two-Judge Bench of this Court observed that the municipality functions for public benefit and when it “acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess”. This Court also held : (SCC p. 513, para 27)

“27.... The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the courts. If sanction is given to build by contravening a bye-law the jurisdiction of the courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative. (See *Yabbicom v. R.* [*Yabbicom v. R.*, (1899) 1 QB 444]).”

This Court held that an unregulated construction materially affects the right of enjoyment of property by persons residing in a residential area, and hence, it is the duty of the municipal authority to ensure that the area is not adversely affected by unauthorised construction.

164. In *Friends Colony Development Committee v. State of Orissa* [*Friends Colony Development Committee v. State of Orissa*, (2004) 8 SCC 733], this Court dealt with a case where the builder had exceeded the permissible construction under the sanctioned plan and had constructed an additional floor on the building, which was unauthorised. R.C. Lahoti, C.J., speaking for a two-Judge Bench, observed : (SCC p. 744, para 24)

“24. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building.”

Noting that the private interest of landowners stands subordinate to the public good while enforcing building and municipal regulations, the Court issued a caution against the tendency to compound violations of building regulations : (*Friends Colony Development Committee case* [*Friends Colony Development Committee v. State of Orissa*, (2004) 8 SCC 733], SCC p. 744, para 25)

“25. ... The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions.”

165. In *Priyanka Estates International (P) Ltd. v. State of Assam* [*Priyanka Estates International (P) Ltd. v. State of Assam*, (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283] , Deepak Verma, J. speaking for a two-Judge Bench, observed : (SCC p. 42, para 55)

“55. It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.”

The Court lamented that the earlier decisions on the subject had not resulted in enhancing compliance by developers with building regulations. Further, the Court noted that if unauthorised constructions were allowed to stand or are “given a seal of approval by Court”, it was bound to affect the public at large. It also noted that the jurisdiction and power of courts to indemnify citizens who are affected by an unauthorised construction erected by a developer could be utilised to compensate ordinary citizens.

166. In *Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai* [*Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai*, (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89] , G.S. Singhvi, J., writing for a two-Judge Bench, reiterated the earlier decisions on this subject and observed : (SCC p. 369, para 8)

“8. At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the

hierarchy of administration will not allow unscrupulous developers/builders to take law into their hands and get away with it.”

170. In the present case, once this Court has determined that the sanctioned plan for Apex and Ceyane (T-16 and T-17) breached the NBR 2006, NBR 2010, NBC 2005, U.P. Act, 1975 and the U.P. Apartments Act, 2010, it becomes its duty to take stock of the violations committed by the appellant in collusion with Noida. The appellant has raised false pleas and attempted to mislead this Court, while the officials of Noida have not acted bona fide in the discharge of their duties. The appellant has stooped to the point of producing a fabricated sanctioned plan. Therefore, we confirm the directions of the High Court including the order of demolition and for sanctioning prosecution under Section 49 of the U.P. UD Act, as incorporated by Section 12 of the U.P. IAD Act, 1976, against the officials of the appellant and the officers of Noida for violations of the U.P. IAD Act, 1976 and U.P. Apartments Act, 2010.”

There is no scope for interference with the order impugned for the reasons discussed hereinabove.

The writ petition is disposed of.

However, there will be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)