

S/L 21
07.03.2022
Court. No. 19
GB

W.P.A. 2983 of 2021

Dr. Prasenjit Ganguly & Ors.
VS
The State of West Bengal & Ors.

*Mr. Sabyasachi Chatterjee,
Ms. Debolina Sarkar,
Mr. Shusovan Dey.*

...for the Petitioners.

Mr. Arjun Ray Mukherjee.

...for the Respondent No.7.

Mr. Sourav Koley.

...for the Respondent No.11.

Ms. Sayanti Santra.

...for the Respondent No.12.

Mr. Tanmoy Mukherjee.

...for the Respondent Nos.18 & 19.

Mr. Nilanjan Bhattacharya.

...for the Respondent No.20.

*Mr. Ziaul Islam,
Mr. A.H. Molla.*

...for the State.

The petitioners are some of the residents and owners of a multistoryed building constructed on plot nos.3 and 4, Kashinath Chatterjee Lane, Police Station – Shibpur, District- Howrah.

The contention of the petitioners is that the respondent no.20 has been running a gym from one of the floors and respondent nos.12 and 17 have been running two restaurants. The respondent nos.11, 13 to 16, 18, 19, 21 to 24 are some of the persons interested in the alleged businesses.

The allegations are that the corporation illegally allowed the restaurant and gym to operate without changing

the nature of user of the said property in accordance with law. The next contention is that the gym and restaurants are creating health hazards, pollution and also endangering the structural stability of the building in question. Reliance has been placed on a communication made by a structural engineer to the Commissioner, Howrah Municipal Corporation indicating that the building was in a dangerous condition and the vibration which occurred due to the change in the user of the said flats and upon installation of machines etc, should be looked into by the Corporation as the building may collapse at any moment, thereby causing loss and injury to human lives.

Mr. Ray Mukherjee, learned advocate appearing on behalf of the Pollution Control Board submits that notices had been issued to the restaurant owners calling upon the said persons to satisfy the authority with regard to the compliance of necessary formalities with regard to grant of permission to operate the said restaurant. One of the restaurant owners produced the consent to operate certificate but the other did not.

The respondent no.17 shall comply with the necessary formalities of the Pollution Control Board as directed by the Board itself. If the respondent no.17 fails, the Board is at liberty to proceed in accordance with law.

With regard to the allegation of change of user, the respondent no.12, who operates the restaurant “Pirates of Bengal”, has produced documents to show the method by which the said respondent came into possession of the said

property in question. Licences and necessary permissions from the corporation and all other authorities for running such restaurant, have been obtained. Thus, the change of user for the restaurant “Pirates of Bengal” has been granted by the corporation. As per the affidavit filed by the respondent no.12, it appears that the authorities permitted the restaurant. The said affidavit is taken on record.

The respondent no.20 has produced the certificates and permissions granted for operating the gym and it appears that the said property has been assessed as a commercial place as per the records of the corporation. Copies of the documents are produced before this Court. In this case too, the change of user has been approved by the corporation.

Thus, this Court is not in a position to pass any orders as prayed for by Mr. Chatterjee, learned advocate for the petitioners on the ground that the restaurant and the gym have been running upon obtaining necessary permission from the Howrah Municipal Corporation, as per the records available before the Court so far. With regard to the allegation of endangering the building and structural stability due to installation of heavy machinery, this Court is of the opinion that the competent authority of the Howrah Municipal Corporation shall cause an inspection of the gym and the restaurants in question and prepare a report with regard to the structural stability of the building. The report shall be handed over to the petitioners and all respective parties. Parties will be at liberty to respond to the said report

and thereafter upon hearing the parties, a reasoned order shall be passed and communicated to all. Needless to mention that on the basis of what transpires during the inspection and at the hearing, the corporation shall take necessary steps in accordance with law. The parties shall exchange all documents, which they wish to rely upon during the hearing before the corporation. Opportunity shall be given by the corporation to all the parties to deal with the documents relied upon by each other. The corporation shall also be free to indicate to the respondents, who are running the restaurants and the gym about any further compliances and formalities, which may be necessary under the law. Needless to mention that the respondents, running the gym and restaurants shall comply with the direction of the corporation. The observations are tentative and the corporation shall decide all the issues independently. The permission so far granted by the corporation shall be subject to the final decision of the corporation in this regard.

The entire exercise shall be completed within a period of three months from date of communication of this order.

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.)