

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

MAT 225 of 2022

with

CAN 1 of 2022

(Through Video Conference)

Reserved on : 03.03.2022

Pronounced on: 30.03.2022

Abuchelem Laskar

...Appellant

-Vs-

Makhlufar Rahaman Gazi & Ors.

...Respondents

Present:-

Mr. Abhratosh Majumder, Sr. Adv.,

Mr. Uday Narayan Betal,

Mr. Dhananjay Banerjee, Advocates

.... for the Appellant

Mr. Jishnu Chaudhuri,

Ms. Amrita Panja Moulick, Advocates

..... for the State

Mr. Kollal Basu,

Mr. Sudarshan Ghosh , Advocates

.....for the Respondents/Writ Petitioners

Mr. Abdur Rakib, Advocate

....for the Respondent No. 9

Mr. Jisan Hossain,

Mr. Kunal Ganguly, Adocates

....for the Respondent No. 10

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. By this appeal, correctness of the order of the learned Single judge dated 18.02.2022 passed in W.P.A. No. 11301 of 2021 (Makhlufar Rahman Gazi & Ors. -versus- Saraswati Naskar & Anr.) has been questioned by the appellant.
2. The facts of the case are that the writ petitioner, herein the respondent no. 1 had filed a writ petition bearing WPA no. 11301 of 2021. There was an allegation in the writ application that the respondent/appellant, without sanctioning any building plan or taking permission from the local gram panchayat made construction on the writ petitioner/respondent's (1 to 4) plot. Notwithstanding that complaints were being lodged, the Pradhan and the local police did not take any cognizance of the case.
3. By an order dated 4th August, 2021 the concerned gram panchayat was directed to dispose of the complaint. On non-compliance with the order, a contempt application bearing C.P.A.N 724 of 2021 was preferred against the Pradhan of South 24 Parganas, wherein the appellant was not made a party. Subsequently, a rule was issued upon the alleged contemnor, i.e., the Pradhan. Moreover, the contemnor filed the affidavit in the form of a report in accordance with the order dated 4th August, 2021.
4. An order was passed by Hon'ble Justice Rajasekhar Mantha directing the demolition of the alleged illegal building constructed by the appellant, without making him a party to such proceeding thus, giving rise to this appeal.
5. It was submitted before the learned Single Judge that no sanction plan was ever given to the private respondent to effect any construction and the counsel for the private respondent therein had produced documents containing a letter and signature of Hasna Banu Sheikh, member of Zilla Parishad, purported to be an authority to effect construction.

6. The learned Single Judge noted that the entire construction made by the private respondent therein was unauthorized and illegal and that they made repeated and regular misrepresentation before the Court. Mr Abu Salem was added as contemnor in the said proceedings and was directed to be present before the Court on 4th March, 2022.

7. As held by the learned Single Judge, the construction carried out by the private respondent therein was unauthorized and carried out illegally. Thus, the SDO, Baruipur, South 24 Parganas was directed to demolish the said construction in presence of a responsible officer of the South 24 Parganas Zilla Parishad. The officer-in-charge, Bakultala Police Station was directed to ensure that the demolition of the entire construction was to be completed without any hindrance or obstruction in presence of sufficient police force, if needed. Also, the learned Single Judge stated that the alleged contemnor should be dealt with for misleading the Court by making false representation even in a contempt proceeding.

8. Having heard the learned counsel for the parties and after the perusal of the records of the order passed by the learned Single Judge, we are of the view that the learned Single Judge was correct in directing the demolition of the construction. According to Sections 23 (1), 114 B (1) and 160 A (1) of West Bengal Panchayat (Amendment) Act of 2017: “No person shall erect any new structure or building at any area within the jurisdiction of a gram panchayat/ zilla parishad except with the previous permission in writing from the gram panchayat/ Panchayat Samiti/ the Zila Parishad.”

9. As per Section 23 (5) and Section 114 B (5) of West Bengal Panchayat (Amendment) Act of 2017: “Where any new structure or new building is constructed in contravention of the provision of sub-section 1 of Section 23 and sub-section 1 of Section 114 B respectively, the Panchayat Samiti or the permission granting authority shall refer the matter to the sub-divisional

officer concerned who may after giving the owner of such building the opportunity of being heard, make an order directing the demolition of the building as the case may be within such period as mentioned in the order.” Here, no such opportunity of being heard or any notice was given to the appellant before proceeding with the demolition.

10. According to Section 160 A (6) of West Bengal Panchayat (Amendment) Act of 2017: “The Executive officer of the Zila Parishad shall take decision for demolition of the building as the case may be within such period as specified in the order and issue direction to the sub-divisional officer concerned to effect the demolition.” Hence, only after a notice regarding the same is provided to the appellant can the demolition be executed.

11. Thus, this Court is of the view that the demolition shall be executed by the concerned authorities in accordance with the provisions of the West Bengal Panchayat (Amendment) Act of 2017.

12. For the foregoing reasons, the appeal is partly allowed. All pending application are also accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata

30.03.2022

PA(BS)