

04. 01.04.2022
Ct. No.06
Tanmoy

M.A.T. 331 of 2022

**Surya Sen Paul
-Versus-
State of West Bengal & Ors.**

**With
IA No: C.A.N. 1 of 2022**

Mr. Sandip Kumar De, Adv.,
Mr. Ejaz Khan, Adv.,
Mr. Pradeep Kumar De, Adv.

...for the appellant/writ petitioner.

Mr. Raja Saha, Adv.,
Mr. S.P. Lahiri, Adv.

...for the State.

Mr. M.P. Gupta, Adv.,
Mr. Ayan Mitra, Adv.,
Mr. Chandan Mondal, Adv.,
Ms. Antara Panja, Adv.

...for the respondent no.7.

Ms. Manjuli Chaudhuri, Adv.,
Ms. Mekhla Sinha, Adv.

...for the Howrah *Zilla Parishad*.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

Challenge is thrown to an order dated February 15, 2022, passed in an *interlocutory* application. The learned Judge has dismissed the application.

The appellant had entered into an agreement dated February 26, 2014, with the respondent no.7 for

the development of his land, following which a construction was raised.

The appellant approached this Court by filing the present writ application alleging that there had been some violation of the extant building rules by the developer/respondent no. 7 and prayed for demolition of the said unauthorised construction.

It appears from the order dated February 1, 2018, that the learned Single Judge, at the motion stage, while considering the question of granting *interim* order, declined to pass any *interim* order in favour of the writ petitioner/appellant, and kept the question of maintainability of the writ petition open and directed the respondent no.7 to bring on record his stand by filing affidavit-in-opposition.

Again the appellant/writ petitioner took out an application being IA No: C.A.N. 1 of 2018 (Old No: C.A.N. 2915 of 2018) and sought to challenge a report dated January 29, 2018, regarding the construction work by the relevant sub-Assistant Engineer. The said application was disposed of on October 3, 2018, without passing any order in favour of the appellant.

In the application, giving rise to the impugned order, the appellant had again made a prayer before the learned Single Judge to restrain the developer/respondent no.7 from transferring or alienating any portion from his allocation.

The learned Judge dismissed the application holding, *inter alia*, that there was no change in the situation which was existing at the time of hearing of the writ petition at the motion stage on February 1, 2018.

It appears that the ground which has been taken in the application seeking injunction is that since the relevant construction in question is not in accordance with the Building Rules of the *Zilla Parishad*, therefore, any further alienation of the property will aggravate the situation.

We are of the opinion since there was no *prima facie* finding by the learned Single Judge at the time of hearing of the writ petition at the motion stage that there was any unauthorized construction, the said question could not be re-agitated by filing an interlocutory application in the writ petition. An interim order is passed in aid of the final relief. The interim relief sought for was beyond the scope of the final reliefs prayed for in the writ petition.

We, however, make it clear that we have not decided anything with regard to the legality or the validity of the plan or the relevant construction in question.

We are of the view that the writ petition should be heard on merits and disposed of without being influenced by any observation made in this appeal.

With these observations, the appeal being M.A.T. 331 of 2022 and the connected application being IA No: C.A.N. 1 of 2022 are disposed of.

Since the writ petition is pending from 2018, the parties may pray before the learned Single Judge for an early hearing and disposal of the matter.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)