

04.04.2022
Court No. 19
Item no.05
CP

W.P.A. No. 5409 of 2022

Sagnik Guin
Versus
The State of West Bengal & Ors.

Mr. Partho Pratim Roy
Mr. Soumyajit Das Mahapatra

....for the petitioner.

Mr. Siddhartha Banerjee
Mr. Soumajit Majumder

...for the private respondent.

Mr. Mrinal Kanti Ghosh

...for the Kharagpur Municipality.

Mr. Malay Mr. Singh
Ms. Neelam Singh

....for the State.

The writ petitioner is the neighbour of the respondent no. 11. The petitioner has alleged that the respondent no. 11 has made some unauthorized constructions on R.S. Plot No. 308 corresponding to L.R. Plot No. 1127, pertaining to Khatian No. 2606 in Mouza – Inda.

It is the specific contention of the petitioner that respondent no. 11 has constructed a G+4 storeyed building for commercial purpose without a sanction and without any permission. Such statement has been based upon knowledge gathered

from some source. The complaint filed by the petitioner dated March 3, 2022 has not yet been disposed of. Aggrieved, this writ petition has been filed.

Mr. Banerjee, learned advocate appearing on behalf of the respondent no. 11, submits that the writ petition is a counter blast to W.P.A. No. 2637 of 2022 as also to an earlier order passed by this court directing the Kharagpur Municipality (hereinafter referred to as 'the municipality') to act and proceed in accordance with law on the allegations of the respondent no. 11 that the petitioner and also the developer had made certain illegal constructions over R.S. Plot No. 302 which had also been extended over portions of R.S. Plot No. 308.

The next contention of Mr. Banerjee is that such construction was completed in 2007 and the petitioner has moved the writ petition after 15 years from completion of such construction. According to him, the construction is a G + 2 storeyed building along with a basement. He prays that the writ petition should not be entertained in view of the delay caused by the complainant in approaching the municipality against the construction of respondent no. 11. Reliance is placed on the decision in Chennai Metropolitan Water Supply and Sewerage Board Vs. T.T. Murali Babu, reported in (2014) 4 SCC 108.

This court is of the opinion that as there is an allegation that the respondent no. 11 has made some unauthorized construction on R.S. Plot No. 308 corresponding to L.R. Plot No. 1127, pertaining to Khatian No. 2606 in Mouza – Inda, the municipality must look into such complaint and decide all points, immediately.

The petitioner does not admit that such construction was made sometime in 2007. The complaint has been filed on the basis that neither sanction nor permission to construct the G+4 storeyed commercial building had been granted by the authorities. An unauthorized construction whenever made, cannot be sustained only because such construction may have been erected long time ago. Illegality will continue to be an illegality, whenever the same is committed. However, this is not an expression of the court on the contention of the respondent no. 11 and those issues shall be decided by the municipality itself.

The decisions cited by Mr. Banerjee in T.T. Murali Babu (supra) does not help his case in view of the fact that this is an order where the Hon'ble Supreme Court was dealing with a challenge to an order of dismissal from service after four years. The Hon'ble Supreme Court was of the opinion that delay and laches should not be lightly treated and the writ

court must weigh the explanations offered for acceptance of a delayed writ petition before exercising an extraordinary and equitable jurisdiction. As a constitutional court, it was held to be the court's duty to protect the citizen, but simultaneously also to keep itself alive to the primary principle that when an aggrieved person without adequate reason approaches the court at his own leisure and pleasure, the court would be under a legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. The Hon'ble Supreme Court observed that a court should not indulge indolent persons like 'Kumbhakarna' or for that matter 'Rip Van Winkle'.

Mr. Banerjee also relies on a decision of the Hon'ble Supreme Court in the matter of R & M Trust vs. Koramangla Residents Vigilance Group, reported in (2005) 3 SCC 91.

At this juncture, this court is only to decide whether the municipal authorities had failed in its obligation to deal with the complaint of unauthorized construction filed by the petitioner.

In this case, the allegation is that the respondent no. 11 has made some unauthorized construction on R.S. Plot No. 308. Allegations are of construction without a sanction plan and

construction in violation of the rules as the mandatory side space required by law was not kept.

The contention of Mr. Banerjee with regard to the age of the building cannot be decided by the writ court at this stage. However, the court is of the view that the municipality must ensure that constructions which have been made should have been made in accordance with the sanction plan and the rules prevailing at the time when such construction was erected.

In the opinion of the court, illegal constructions cannot be continued under any circumstances and the municipality is under a legal obligation to ensure that the rules and regulations governing constructions must be followed in letter and spirit.

The documents filed by Mr. Banerjee with regard to the sanction and the permission to run the shop room etc/ are kept on record.

The decision cited by Mr. Banerjee in the matter of T.T. Murali Babu (supra) does not help the respondent no. 11 in this case as the said decision was rendered under different facts and circumstances. The person who had suffered an order of dismissal, had challenged the said order after four years and the Hon'ble Supreme Court was of the view that remaining innocuously oblivious to

delay in challenging an order by the aggrieved party, did not foster the cause of justice. On the contrary, it brought injustice, for it was likely to affect others.

Unauthorized construction is an illegality. Whether rights of others had ripened during the intervening period is not something which can be decided by the writ court at this stage. Moreover, the said decision of the Supreme Court was passed in a matter where the order of dismissal was challenged by the dismissed employee after four years. However, the ultimate rejection of the appeal by the Supreme Court was on merits and not on the ground of delay. It is also not the case of the respondent no.11, that third party rights have been created.

In the decision of R & M. Trust (supra), the Hon'ble Supreme Court held that challenging an unauthorized construction belatedly may result in affecting the rights of third parties and the delay can be fatal. However, these issues cannot be decided at this stage before the municipality comes to the finding whether the respondent no. 11 had indulged in any unauthorized construction on R.S. Plot No. 308.

Mr. Roy, learned advocate for the petitioner, distinguishes the decisions cited by Mr. Banerjee. He submits that the law has undergone a sea change and third party rights have been dealt with

appropriately by the Hon'ble Supreme Court in subsequent decisions where the Hon'ble Supreme Court had held that innocent third parties who were affected by unauthorized construction, which were ultimately demolished, must be compensated by the builders and/or the developers who has sold the property to such persons. He relies on the decision of *Dipak Kumar Mukherjee vs. Kolkata Municipal Corporation*, reported in 2013 (5) SCC 336.

This court has not expressed any opinion with regard to the correctness of the allegations of unauthorized construction as the court is of the opinion that it is only the municipality which is empowered by law to take such decisions on the allegations of unauthorized construction.

Under such circumstances, the writ petition is disposed of with a direction upon the competent authority of the municipality to simultaneously dispose of the complaint of the petitioner dated March 3, 2022 along with the proceedings to be initiated in terms of the order dated August 3, 2021 passed in WPA 11314 of 2021 and order dated April 4, 2022 passed in W.P.A. No. 2637 of 2022 in accordance with law. A reasoned order shall be passed and communicated to the parties. All persons interested in the said structure shall be allowed to participate during the inspection and at the hearing.

The parties shall be allowed to submit written statements and adduce oral and documentary evidence.

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

The writ petition is, thus, disposed of. There shall be no order as to costs.

Photocopy of the order passed in W.P.A. No. 2637 of 2022 shall be retained with the records of this writ petition.

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

(Shampa Sarkar, J.)