

17.05.2022
rc/ct.no.10
Item No.07

WPA No. 7659 of 2022
Bichitra Deb & Ors.
Versus
The State of West Bengal & Ors.

Mr. Anindya Lahiri
Mr. Mainak Ganguly ...for the Petitioners

Mr. Susovan Sengupta
Mr. Debopriyo Chatterjeefor the State

Affidavit of service filed in Court today be taken on record.

Heard learned counsels appearing on behalf of the parties.

It is submitted by the learned counsel appearing on behalf of the petitioners that the leasehold right of the plots in question granted in favour of the predecessors of the petitioners, Manjulal Deb, vide an indenture dated January 20, 1987, and after demise of the said lessee, the petitioners being his legal heirs, have stepped into his shoes as present lessees of the property. The petitioners raised construction in the property after obtaining sanction plan from the concerned authority and subsequently approached the concerned authority for permission for alteration of user of the property in question in terms of the Government Notifications published on May 06, 2005 and May 06, 2008 respectively. The petitioners submitted a representation before the concerned authority in this regard on July 11,

2016, which was kept pending. The constituted attorney of the original lessee, Manjula Deb, approached this Court in Writ Petition being W.P.No. 13990(W) of 2017. By an order dated January 08, 2019, a Coordinate Bench of this Court directed the concerned authority to consider and decide the representation dated July 11, 2016, for change of user, in accordance with law after hearing the petitioner as well as the other necessary parties as deemed appropriate by the authority. The entire exercise was directed to be completed within a period of six weeks from the date of communication of the order. In the meantime the predecessor of the petitioners approached the Civil Court in Title Suit No. 953 of 2017 and on prayer of the said predecessor, the learned Civil Court, by an order dated November 23, 2017, granted an order of interim injunction in favour of the petitioners restraining the concerned authority from giving effect to or taking any coercive steps in view of the order dated February 25, 2017 and October 13, 2017, till December 12, 2017, the interim order being extended from time to time. The order under challenge in the Civil Suit was issued by the authority for demolition of the unauthorised construction allegedly made by the original lessee.

It is submitted on behalf of the petitioners that the representation submitted by the petitioners has not been disposed of in terms of the order of this Court and during pendency of such representation a notice was issued by

the Joint Secretary, Government of West Bengal on October 31, 2018 alleging violation of the terms and conditions of the lease deed in respect of the plot in question. The petitioners replied to the said notice and reiterated their contention as made out in the representation submitted earlier, and dealt with the specific clauses of the show cause notice. During pendency of the representation as well as the earlier show cause notice, a second show cause notice was issued upon the petitioners on February 07, 2022 containing identical averments as in the first notice. The petitioners replied to the said notice without prejudice to their rights and contentions and have challenged the notices on the ground that they have been issued during pendency of the representation which is yet to be disposed of in compliance with the earlier order of this Court.

Per contra, it is submitted by the learned counsel appearing on behalf of the State-respondents that there is no legal bar in issuance of the second show cause notice on the same terms as the first show cause notice has not culminated in any penalty. Secondly, as the respondents have not been impleaded as parties in the Title Suit, any order of injunction granted in the said suit is not binding upon the respondents, moreso, as the respondents have exercised the power in terms of Clause 2(6)(a) of the deed of lease.

By an order dated January 08, 2019, in W.P.No. 13990(W) of 2017 a Coordinate Bench of this Court directed the Joint Secretary to the Government of West Bengal, Urban Development and Municipal Affairs Department to consider and dispose of the representation dated July 11, 2016 made by the original lessee within a stipulated time frame. It is not in dispute that the said representation is still pending. The representation was taken up for consideration by the Joint Secretary to the Government of West Bengal and by an order dated July 08, 2019 decision with regard to the same was kept pending awaiting opinion of the Bidhannagar Municipal Corporation (in short, "BMC") and receipt of the required reports from the said authority. In the meantime, trade licence was issued by the BMC in favour of the partners of Balle Balle Dhaba for running a restaurant in the premises in question till December 09, 2024.

In view of the fact that the order of this Court granted earlier has not been complied with by the respondents and also that the representation submitted by the petitioners on July 11, 2016 is still pending, the concerned authority, being the 1st respondent herein, ought to be directed to consider and dispose of the representation within a stipulated time frame after giving reasonable opportunity of hearing to all the stakeholders including the petitioners and upon consideration of the

notifications dated May 06, 2005 and May 06, 2008 and subsequent notifications, if any, in accordance with law.

No coercive steps shall be taken by the respondent authorities in terms of the show cause notices issued by them on October 31, 2018 and February 07, 2022 respectively till a fortnight after disposal of the representation.

The decision taken by the authority shall be communicated to the petitioners within a week thereof.

It is made clear that this Court has not gone into the merits of the case and the petitioners shall be at liberty to place their contention as made out in the writ petition before the authority at the time of hearing.

With the above observations and directions this writ petition being WPA No. 7659 of 2022 is disposed of.

There shall be, however, no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Suvra Ghosh,J)