

07. 31.08.2022
Ct. No.6
Tanmoy

M.A.T. 1240 of 2022

**Sri Sundeep Kumar Surana
-Versus-
The State of West Bengal & Ors.**

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

Mr. Sourajit Dasgupta, Adv.,
Mr. Soumya Nag, Adv.,
Mr. Abhinav Rakshit, Adv.

...for the appellant.

Mr. Chandi Charan De, Ld. A.G.P.,
Mr. Rabindra Narayan Dutta, Adv.,
Mr. Hare Krishna Halder, Adv.,
Mr. Anirban Sarkar, Adv.

...for the State.

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

...for the writ petitioner/respondent.

Ms. Monjuli Chowdhury, Adv.,
Ms. Mekhla Sinha, Adv.

...for the respondent nos. 2, 4, 5 & 6/
Howrah Zilla Parishad.

Affidavit of service filed in Court today be kept with
the records.

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

This appeal is directed against an *interim* order
dated July 22, 2022. The matter has been directed to be

listed before the learned Single Judge in November, 2022.

The writ petitioner claims to be co-sharer of a particular plot of land in the district of Howrah under the Begri *Gram Panchayat*. Her grievance is that the present appellant, who was the respondent no.9 in the writ petition, has put up an Industry on a portion of the concerned land which is agricultural land, without getting the land converted and without obtaining sanction of building plan from the Competent Authority. She approached the learned Single Judge by filing W.P.A. 9311 of 2021 for an order directing the respondent Authorities to take appropriate steps in the matter.

The learned Single Judge called for a report from the Howrah *Zilla Parishad*. Such report was filed. The learned Judge also noted that the Howrah *Zilla Parishad* had issued a show-cause notice dated January 28, 2016 to the respondent no.9, which was replied to by the respondent no.9 by a letter dated February 2, 2016. The learned Judge recorded that it is an admitted position that conversion of the land has not been obtained by the respondent no.9/appellant herein, nor is there any sanctioned plan for setting up the factory by the respondent no.9. The learned Judge also noted that the show-cause notice, issued by the Howrah *Zilla Parishad* directing the appellant herein to demolish the

unauthorized construction, has not been carried out. The order of self-demolition has not been withdrawn and still subsists. The learned Judge went on to hold, and in our view rightly, that the civil suits pending between the writ petitioner and the respondent no.9 can have no bearing with regard to the status of the land and absence of sanctioned plan.

The learned Judge accordingly passed the following direction:-

“ In the aforesaid facts and circumstances, I direct Howrah Zilla Parishad to take appropriate steps as against the respondent no.9 under the Town and Country Planning Act, 1979 applicable in respect of the land wherein the respondent no.9 has constructed the factory shed and other applicable law and in terms of the letter dated 28th January, 2016 within a period of three months from date and file a report in the form of an affidavit regarding the steps taken in terms of this order on the returnable date.

Let this matter appear in the combined monthly list of November, 2022.”

Being aggrieved, the respondent no.9 in the writ petition has come up before us by way of this appeal.

We have heard learned Advocates for the parties at length. Learned Advocate for the appellant says that the appellant's application for conversion of the land in question, which was made sometime in June, 2019, is yet to be disposed of. His application for retention of the alleged unauthorized construction, made under the provisions of The West Bengal Town and Country

(Planning and Development) Act, 1979, is also pending. If those applications succeed, then the factory shall stand regularized and no question of demolition would arise. Hence, the order of the learned Single Judge directing the Howrah *Zilla Parishad* to take action against the respondent no.9 under The West Bengal Town and Country (Planning and Development) Act, 1979, should be set aside.

Learned Advocate appearing for the writ petitioner/ respondent says that the conduct of the appellant has been extremely bad. Without obtaining necessary sanction, the appellant constructed a factory on agricultural land, without getting the same converted following due process of law. The appellant had also approached a learned Single Judge of this Court by filing W.P.A. 15344(W) of 2015 for a direction on the West Bengal State Electricity Distribution Company Limited to provide industrial connection to the appellant at the factory in question. The writ petition was disposed of without granting such prayer, noting that conversion has not been obtained by the writ petitioner therein. However, it was observed that “*if the writ petitioner at any time obtains conversion of this land into an industrial land, the respondent-licensee will consider his application for grant of electricity supply in accordance with law subject to the petitioner’s compliance with all other routine formalities.*”

The appeal from the said order was summarily dismissed by an order dated January 18, 2016, passed in F.M.A. 4702 of 2015.

We have considered the rival contentions of the parties. We are constrained to observe that the conduct of the appellant is far from happy. The law may have provision for granting *post facto* permission for a construction or *post facto* conversion of land after construction has been made on the land. However, an honest person would first obtain the necessary permission and only then carry out the activities. The construction made by the appellant as of date remains unauthorized and illegal. In our view, there is no proper application also on behalf of the appellant, for retention or regularization of the factory that has been put up by the appellant without obtaining sanction of building plan. Learned Advocate for the appellant contends that the reply of the appellant, dated February 2, 2016, to the show-cause notice dated January 28, 2016, issued by the Howrah *Zilla Parishad* under Sections 46, 52 and 53 of The West Bengal Town and Country (Planning and Development) Act, 1979, itself is an application for retention of the alleged unauthorized construction. We are unable to agree with such contention. There is a weak request in the last paragraph of such reply to the effect that the appellant may be permitted to run the business within his factory premises smoothly and

uninterruptedly. This can hardly be construed to be an application for permission to retain unauthorized construction.

Even otherwise, insofar as the conversion application of the appellant is concerned, admittedly, the same was filed with the concerned Block Land and Land Reforms Officer (BL&LRO) in June, 2019. More than three years have gone by. The appellant has not shown any urgency in the matter. The appellant has not shown minimum diligence to follow up the application. He should have approached the appropriate forum for having his application disposed of expeditiously. He took no such steps. Again, his conduct is far from satisfactory.

Learned Advocate for the appellant says that the writ petitioner has no *locus standi* to maintain the writ application. He will be at liberty to urge this point before the learned Single Judge.

In view of the aforesaid, we are of the considered opinion that the appellant is not a litigant who deserves indulgence from a Court of equity. We see no reason to interfere with the order under appeal.

The appeal being M.A.T. 1240 of 2022 and the connected application being IA No: C.A.N. 1 of 2022 are accordingly dismissed, however, without any order as to costs.

This order will in no manner stand in the way of disposal of the conversion application made by the appellant before the concerned Block Land and Land Reforms Officer (BL&LRO).

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

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)