

D/L
Item No. 30
22.03.2022
KOLE

**CPAN 1045 of 2021
In
MAT 1228 of 2021**

**Biswajit Banerjee
-Vs.-
Debdas Ash & Anr.**

*Mr. Raghunath Chakraborty,
Mr. Mehboob Ahmed,*

...for the petitioner.

*Mr. Tapas Kumar Dey,
Mr. Ashis Kumar Dutta,
Mr. N. Sarkar,*

...for the contemnor.

This contempt application has been filed alleging wilful violation of an order dated December 7, 2021, whereby MAT 1228 of 2021 was disposed of by us.

The writ petitioner had approached the learned Single Judge by filing WPA 16607 of 2021 alleging unauthorized construction at the premises in question by the private respondents in the writ petition. The learned Single Judge, by an order dated November 3, 2021 directed the Sub-Divisional Officer, Serampore, Hooghly to decide the legality of the construction in question, after giving an opportunity of hearing to the concerned parties and if the construction is found to be illegal, the authority was to take steps in accordance in law. The learned Judge directed maintenance of *status quo* by the private respondents in the meantime. Being aggrieved, the private respondents preferred an appeal. While affirming the order of the learned Single Judge we had directed that the order of *status quo* passed by

the learned Single Judge shall continue till the disposal of the matter by the Sub-Divisional Officer.

Mr. Chakraborty, learned Advocate appearing for the present petitioner (writ petitioner) submits that in violation of the order of *status quo* passed by the learned Single Judge and also in violation of the order of *status quo* passed by us, the private respondents who are the alleged contemnors herein, carried on merrily with the illegal construction. It was only upon the Sub-Divisional Officer passing an order on December 21, 2021, to the effect that the impugned construction is wholly illegal and ought to be demolished, that the alleged contemnors stopped the construction work.

The alleged contemnors in their affidavits say that they had started the construction work on October 29, 2021. However, immediately upon coming to know of the order of *status quo* dated November 3, 2021, passed by the learned Single Judge, they stopped construction and thereafter did not make any further construction at all. They say that they have not disobeyed any order, either of the learned Single Judge or of this Court.

Mr. Chakraborty showed us photographs annexed to the contempt petition in support of his submission that the alleged contemnors continued with construction work even after the order of *status quo* passed by the learned Single Judge and also by this Court. The photographs do show dates. Dates on photographs are not always reliable. The age-old procedure of holding the current day's newspaper in the backdrop of the photograph ought to have been followed.

That would have lent total credibility and authenticity to the photographs. We have been called upon to punish the alleged contemnors in the exercise of contempt jurisdiction. This is a *quasi*-criminal jurisdiction and ought to be carefully exercised, only when the Court is absolutely certain that the alleged contemnors have with full knowledge of an order, willfully violated such order. From the material on record, we are unable to come to a definite finding that the alleged contemnors continued with the construction in question even after the order of the learned Single Judge or after our order dated December 7, 2021.

Mr. Chakraborty says that proceeding on the basis that the alleged contemnors started construction on October 29, 2021, it is impossible to have a two-storied building constructed, although incomplete, within five days. As aforesaid, we cannot venture on the basis of probabilities or possibilities. We have to be absolutely certain that a person is guilty of contemptuous conduct before we punish that person for contempt of Court.

As recorded above, the Sub-Divisional Officer has passed an order for demolition of the impugned construction. We are also told that such order has been challenged by the present alleged contemnors by filing a writ petition which is pending before a learned Single Judge. We make no comment in that regard. Such writ petition shall be carried to its logical conclusion. However, we are not inclined to pass any order on this contempt application.

The contempt application, being no. CPAN 1045 of 2021 is accordingly disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)