

07.06.2022
Item Nos. 32
& 33
Court No.6.
S. De

C.P.A.N. 1425 of 2019
in
M.A.T. 1379 of 2019
Susanta Saha
Versus
Arindam Guin & Anr.
with
C.P.A.N. 750 of 2020
Susanta Saha.
Vs
Pradip Kumar Paul.

Mr. Malay Kumar Das,
Mr. Dibyajyoti Raha,
...for the petitioner/appellant.
Mr. Chayan Gupta,
Mr. Anirban Dutta,
Mr. Shashwat Nayak,
Mr. Sayantan Sinha,
...for the alleged contemnor.
(in CPAN 750 of 2020)
Mr. Basudeb Gayen,
...for the Baidyabati Municipality.

C.P.A.N. 1425 of 2019 is a contempt application filed by the writ petitioner (Susanta Saha) in W.P. 12761 (W) of 2019 for alleged violation of an order dated October 1, 2019 passed by a Co-ordinate Bench in MAT 1379 of 2019, against the Chairman of Baidyabati Municipality. C.P.A.N. 750 of 2020 is a contempt application filed by the same person for alleged violation of the same order of the Co-ordinate Bench, against the private respondent in the writ petition (Pradip Kumar Paul) who was the appellant in

the appeal in which the Co-ordinate Bench passed the order, violation whereof is alleged.

The writ petitioner who is the applicant in the present contempt applications, approached the learned Single Judge with the grievance that although the private respondent in the writ petition was making unauthorized construction, the municipality was taking no action on the basis of the complaint lodged by the writ petitioner. The learned Single Judge directed the Chairman of the municipality to consider the writ petitioner's representation and pass a reasoned order thereon in accordance with law after giving an opportunity of hearing to all the concerned parties. The learned Judge further observed that although she had not gone into the merits of the case, the private respondent in the writ petition should be restrained from raising further construction and accordingly such an order was passed.

Being aggrieved, the private respondent in the writ petition approached the Appeal Court. A Co-ordinate Bench by the order dated October 1, 2019, set aside the order of injunction that the learned Single Judge had passed against the private respondent/appellant since the learned Single Judge had not applied her mind to the merits of the case. The Co-ordinate Bench further proceeded to order as follows :-

“However, the appellant shall not create any third party interest in it till such time the chairman of the municipality gives his decision on the complaint of the respondent no.1/writ petitioner in terms of the order of the learned Judge.

It is also made clear that whatever construction might be raised by the appellant in the meanwhile shall be subject to and abide by the result of the decision to be given by the chairman of the municipality.

The chairman of the municipality is directed to take a final decision in terms of the order under appeal as early as possible but not beyond 15th November, 2019.

Once the decision is taken, the same shall be communicated to the parties without any delay.”

It is not in dispute that the then Chairman of the municipality did not take a decision in the matter on or before November 15, 2019. In fact a decision was taken by the present Chairman of the municipality only in May, 2022.

The allegation of the petitioner in the contempt application against the Chairman of the municipality is that the Chairman did not take a decision within the

time period fixed by the Division Bench. This is actually correct. The then Chairman was sleeping over the matter. However, ultimately a decision has been taken, although highly belatedly, and a report has been filed before us.

Learned advocate for the alleged contemnor in C.P.A.N. 1425 of 2019 tenders his client's unqualified apology for the delay in complying with the order of the Division Bench. Keeping in mind the fact that the Covid Pandemic broke out sometime in early 2020, and the Pandemic threw normal life out of gear all over the world, we are inclined to take a lenient view and accept the apology of the alleged contemnor in C.P.A.N. 1425 of 2019. The said contempt proceedings accordingly stand dropped.

In so far as the contempt application against the private respondent/appellant is concerned, the allegation is that he created third party interest in respect of the impugned construction in violation of the order dated October 1, 2019, passed by the Division Bench. The alleged contemnor in his affidavit has stated that in his understanding, the order directed the Chairman of the municipality to take a decision on the complaint of the writ petitioner positively by November 15, 2019, and not beyond that. Since he got no intimation of any hearing before the Chairman of the municipality or of any order passed

by him, he was under the bona fide impression that the restraint order stood vacated after November 15, 2019. Accordingly, after November 15, 2019 he created third party interest in respect of the impugned construction. This he has candidly admitted in his affidavit.

Having heard learned counsel for the parties, we are of the view that this is not a case where we can say that the alleged contemnor in C.P.A.N. 750 of 2020 has wilfully violated this Court's order in question. It is settled law that where an order is liable to more than one interpretation and the alleged contemnor has acted on the basis of one such interpretation which is a plausible interpretation, the alleged contemnor must be given the benefit of doubt. A contempt proceeding is a quasi criminal proceeding. The contempt jurisdiction has to be exercised sparingly and cautiously to uphold the majesty of the Court and to punish a person who has shown defiance by wilfully and deliberately violating an order of Court with full knowledge thereof.

In the present case, the order in question can be interpreted as saying that the Chairman of the municipality was granted time to take decision in the matter only till November 15, 2019, and not beyond that date. The restraint order against the private respondent/appellant was directed to continue till the

date of decision by the Chairman of the municipality. On a conjoint reading of the two relevant paragraphs in the order, it is possible to argue that the restraint order stood automatically vacated upon the Chairman of the municipality failing to take a decision in the matter on or before November 15, 2019. Admittedly, the third party interest that the alleged contemnor in C.P.A.N. 750 of 2020 has created in respect of the impugned construction, was after November 15, 2019.

In view of the aforesaid, we are inclined to give the alleged contemnor the benefit of doubt. The contempt proceeding stands closed against him.

Learned advocate for the petitioner says that it would appear in the report of the municipality that has been filed in Court that the alleged contemnor in C.P.A.N. 750 of 2020 has made the impugned construction without having any sanctioned plan in his favour. A post facto sanctioned plan has been obtained by him only after the present contempt application was filed. Learned advocate for the petitioner wants us to pass appropriate orders in respect of such alleged unauthorized construction. We are not inclined to do so as that is not within the scope of the present contempt proceedings. If the petitioner has a legitimate grievance, he will be at liberty to take appropriate steps before the appropriate forum in accordance with law.

C.P.A.N. 1425 of 2019 and C.P.A.N. 750 of 2020 are, accordingly, disposed of.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Subhendu Samanta, J.)

(Arijit Banerjee, J.)