

5.
19-01-2023
debajyoti
(Ct. no.06)

MAT 33 of 2023
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IA NO:CAN/1/2023

Gopal Biswas & Ors.
Vs.
Nitai Biswas & Ors.

Mr. Shamim ul Bari,
Mr. Md. Hasanuzzaman,
Mr. Md. Zeeshanuz Zaman,
Ms. Keya Sutradhar

... For the Appellants.

Mr. Partha Sarathi Bhattacharyya, Sr. Adv.,
Mr. Raju Bhattacharyya

... For Respondent Nos.1 & 2.

Mr. R. Saha,
Mr. S. P. Lahiri

... For the State.

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

A judgment and order dated January 03, 2023, whereby the writ petition of the respondent nos.1 and 2/writ petitioners was disposed of, is the subject matter of challenge in this appeal.

It appears that the appellants herein had made a representation to the concerned Panchayat to the effect that the writ petitioners herein had made unauthorized construction on a plot of land adjacent to the plot of land owned by the appellants herein. Alleging that such representation did not receive the attention of the authorities, the appellants herein filed a writ petition being WPA 11443 of 2021. The said writ petition was disposed of by an order dated September 14, 2021 with the following directions:-

“ Without going into the merits of the claims and counter-claims of the parties, the writ petition is disposed of with a direction upon the competent authority of the Chandaneshwar-I Gram Panchayat to dispose of the representation of the petitioner dated June 21, 2021 being Annexure-P2 to this writ petition in accordance with law, upon hearing the petitioner as also the respondent nos.8 and 9. A reasoned order shall be passed and communicated to all concerned. If necessary, the competent authority shall also cause an inspection in presence of the parties. The parties will be supplied the inspection report. the proceeding, which was initiated, shall be reached to its logical conclusion in accordance with law. The Panchayat authorities will only decide the issue of illegality in the construction that is whether the construction has been done in the absence of a sanction plan or in deviation thereof. With regard to the allegation of illegal conversion of the land from 'Sali' to 'Bastu', the petitioner is at liberty to approach the appropriate authority in accordance with law.

The entire exercise shall be completed by the Panchayat authorities within a period of three months from date of communication of this order. ”

It appears that after the Panchayat conducted an inspection of the property in question, it referred the matter to the concerned Block Development Officer. A copy of the inspection report was not made over to the writ petitioners, is their allegation. It appears that the Block Development Officer conducted a hearing. The matter was then referred to the Sub-Divisional Officer to pass an order of demolition. The writ petitioners in the present round of litigation challenged the orders of the Block Development Officer and the Sub-Divisional Officer before the learned Single Judge.

The learned Judge, after hearing the parties at length, observed that although the law is well settled that an unauthorized construction cannot be protected and the same must be demolished, the law also provides that the person responsible for such unauthorized construction must be given adequate opportunity to substantiate his case. The learned Judge disposed of the writ petition with the following directions:-

“ Even if the panchayat authorities had caused an inspection, the court had directed that the report of such inspection should be handed over to the parties and a hearing should be given to the parties. Thereafter, a reasoned order was directed to be passed and communicated to all. Further, steps under Section 23(5) of the West Bengal Panchayat Act, 1973 was to be taken after the aforementioned exercise was completed by the panchayat authorities.

Thus, in view of the above set of facts and the misunderstandings that had taken place between the authorities, the orders impugned dated April 27, 2022 and June 7, 2022 are set aside and quashed only on the ground of procedural irregularity. The factual findings have not been interfered with as there is nothing on record which can controvert such finding.

When the law provides that an opportunity must be given to the persons responsible for such construction, this court directs that a further inspection be made by the Chandaneshwar - I Gram Panchayat on February 1, 2023 at 11 am. Such inspection shall be held in respect of the construction of the petitioners on L.R. Dag No. 105 pertaining to L.R. Khatian No. 259/1 of Mouza - Karunahati.

This order shall amount to notice to the parties. No further notice shall be issued upon the parties. The parties shall be present at the site on the date and time fixed by the court.

If the parties are not available, the inspection shall be carried on in their absence. A report shall be prepared and handed over to the respective parties and/or their representative(s). Thereafter, the parties shall be entitled to file their written statement/answers to the said report within February 10, 2023. A hearing shall be given by the concerned gram panchayat to the parties on February 13, 2023 at 12 noon. No further notice of hearing shall be served.

A reasoned order shall be passed and served upon the parties within February 24, 2023. Simultaneously, the order shall be forwarded to the Sub-Divisional Officer, Baruipur as per Section 23(5) of the West Bengal Panchayat Act, 1973 by the concerned gram panchayat. Thereafter, steps shall be taken by the Sub-Divisional Officer, Baruipur in accordance with law, within six weeks from receipt of the papers from the panchayat authorities. ”

The orders of the Block Development Officer and the Sub-Divisional Officer were set aside.

Being aggrieved, the private respondents in the writ petition have come up by way of this appeal.

Mr. Bari, learned advocate, appearing for the appellants, argued that there may have been technical deviation from the order of this Court that was passed on September 14, 2021, but, no injustice was caused to the writ petitioners herein. They were given full hearing by the concerned Block Development Officer as well as the Sub-Divisional Officer. Admittedly, the writ petitioners do not have a sanctioned plan for the impugned construction. The learned Judge should not have set aside the demolition order on technical grounds.

We have not called upon the respondents to make submissions.

Justice must not only be done, but must be seen to be done. The principles of natural justice must be observed at all costs. The writ petitioners herein were likely to be affected by the inspection report and hence, in the order passed in the earlier round of litigation, there was a specific direction that a copy of the inspection report would be made over to the writ petitioners herein. They were entitled to know what exactly was there in the report. It may be that the inspection was conducted in their presence. Even then they were entitled to a copy of the report. Legal justice cannot be done without adhering to the principles of natural justice. Purely on the ground of procedural irregularity and breach of natural justice and not on merits, the learned Judge set aside the orders of the Block Development Officer and the Sub-Divisional Officer. The learned Judge has specifically recorded that she has not interfered with the factual finding of the authorities. Only to ensure that the principles of natural justice are complied with, the learned Judge has directed the entire exercise to be carried out afresh within the time frame indicated. We see no apparent infirmity or illegality in the order under appeal, as would persuade us to interfere with the order.

We affirm the order of the learned Single Judge. The directions contained in the impugned order shall be carried out. The appeal and the connected application are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the stay application shall be deemed not to have been admitted by the respondents.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)