

D/L
Item No. 4
13.02.2023
KOLE

MAT 66 of 2023
With
IA No. CAN 1 of 2023
Samarendra Nath Sit
-Vs.-
The State of West Bengal & Ors.

Mr. Anil Kr. Chattopadhyay,

... for the appellant.

Mr. Tarun Kumar Ghosh,
Mr. Abdus Salam,

... for the State.

Mr. A. Banerjee,
Mr. N. Sengupta,
Mr. S. Banerjee,

... for the private respondents.

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

This appeal is directed against a judgment and order dated December 12, 2022, whereby the appellant's writ petition being WPA 26288 of 2022 was disposed of. The appellant had approached the learned Single Judge with the grievance that the private respondents are making construction without any sanctioned plan and without leaving adequate side space.

The learned Judge found that the concerned Panchayat had sanctioned a plan in favour of the private respondents for construction of a basement+G+1 storeyed commercial building. There were other documents on record wherefrom the learned Judge concluded that there is no substance in the contention of the writ petitioner that the

impugned construction is without any sanction of the concerned Panchayat.

As regards the other allegation that construction was being made in deviation from a sanctioned plan and without leaving adequate side spaces, the learned Judge observed that these are disputed questions of fact and cannot be decided without measurement by the appropriate authorities. Accordingly, the learned Judge disposed of the writ petition with the following directions:

“Under such circumstances, this writ petition is disposed of with a direction upon the Jagatbalavpur-II Gram Panchayat to make an inspection in presence of the parties and to ascertain whether both the parties have maintained adequate side space as required by the building rules. Whether the parties have constructed in accordance with the rules and as per their respective sanction plans, shall be decided. A reasoned order shall be passed and communicated to all.

Remedial measures shall be directed as per the Panchayat Act in case deviations and violations by either party are detected.

The court has not gone into the merits of allegations.

The respondent nos. 10 and 11 shall construct strictly in accordance with the plan.

The entire exercise shall be completed within a period of eight weeks from the date of communication of this order.”

Being aggrieved the writ petitioner is before us by way of this appeal.

Mr. Chatterjee, learned Counsel appearing for the writ petitioner/appellant says that the Panchayat has given notice of inspection to be held on February 15, 2023. The

Panchayat should file a report before this Court after such inspection, for this court to pass appropriate orders. Until the inspection is done and a report is filed, an order of status quo should be passed with respect to the impugned construction.

We have not called upon the respondents to make submissions. We are not inclined to direct the Panchayat to file any report before us. We do not wish to keep this appeal pending either. This is because, we find no infirmity in the order assailed before us.

The Learned Judge has rightly observed that disputed questions of fact are involved. Accordingly, the learned Judge has directed the Panchayat to hold inspection of the construction in question. The learned Judge has also directed that in case the Panchayat finds that either the private respondents or the appellant has erected building without sanctioned plan, appropriate remedial measures will be taken by the Panchayat.

The appellant is apprehensive that unless an *interim* order of restraint is passed against the private respondents, further unauthorized construction will be made. We are of the opinion that this apprehension is not well founded. The learned Judge has clarified that the private respondents shall construct strictly in accordance with the plan.

In any event, if further unauthorized construction is made by the private respondents, the Panchayat shall take appropriate steps in respect of such construction.

Since we have not called for affidavits, the allegations made in the stay application, are deemed not to be admitted by the respondents.

The appeal and the connected application are, accordingly, disposed of.

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

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