

08. 20.02.2023
Ct. No.6
Tanmoy

MAT 84 of 2023

Sk. Ahid Ali
-Versus-
The State of West Bengal & Ors.

With
IA No: CAN/1/2023

Mr. Nilanjan Bhattacharjee, Adv.,
Mr. Abhilash Chatterjee, Adv.,
Mr. Saikat Dey, Adv.

...for the appellant.

Mr. Manas Kundu, Adv.,
Mr. Debabrata Mondal, Adv.

...for the State.

.
Ms. Mekhla Sinha, Adv.

...for the Howrah *Zilla*
Parishad.

Mr. Animesh Paul, Adv.

...for the respondent no.7.

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

A judgment and order dated January 10, 2023, whereby the appellant's writ petition being WPA 28524 of 2022, was in effect dismissed, is the subject matter of challenge in this appeal.

The respondent no.7 had on an earlier occasion approached a learned Single Judge of this Court alleging that the appellant herein had made unauthorized construction without obtaining sanction from the concerned *Zilla Parishad* as also without converting the land from '*danga*' to '*Bastu*'. That writ petition was

disposed of by directing the District Engineer of the *Zilla Parishad* to consider the representation of the respondent no.7 and dispose of the same by a reasoned order after observing the principles of natural justice. It was further directed that if the District Engineer found that the construction had been made either in violation of a plan or without any sanctioned plan, necessary steps shall be taken in accordance with law with regard to the unauthorized construction.

It appears that the District Engineer, in compliance of such order, held an inspection and after giving opportunity of hearing to the concerned parties, passed a reasoned order to the effect that there was an unfinished structure of around 900 sq.ft. with nine columns and the roof. Since the appellant admitted that there was no sanctioned Building Plan, the appellant was directed to demolish the structure. Aggrieved by such order, the appellant approached the learned Single Judge in the present round of litigation.

The learned Judge referred to the decisions of the Hon'ble Supreme Court in the cases of ***Dipak Kumar Mukherjee v. Kolkata Municipal Corpn.*** reported in ***(2013) 5 SCC 336***; ***Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn.***, reported in ***(2021) 10 SCC 1***; ***Friends Colony Development Committee v. State of Orissa*** reported in ***(2004) 8 SCC 733***; ***Priyanka Estates International (P) Ltd. v. State of***

Assam reported in **(2010) 2 SCC 27; Esha Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai** reported in **(2013) 5 SCC 357** and came to the conclusion that since prior sanction was not obtained by the writ petitioner from the concerned Authority, the unauthorized construction cannot be permitted to remain. Accordingly, the learned Judge directed implementation of the demolition order.

Learned Advocate for the appellant says that presently the land in question stands converted from 'danga' to 'Bastu'. Further, the Bye Law 2005 of the Howrah Zilla Parishad and in particular, Chapter IV, Rule 15, permits regularization of a building which has been constructed without obtaining sanction from the Zilla Parishad. Rule 15 reads as follows:-

"If any building is being constructed without Sanction from this Parishad before this byelaw comes into force or without any permission from Panchayat level, the applicant may regularize the said case from this Parishad by submitting as made plan with development fees or fines or both, as below.

- (a) For residential building @ Rs.30/- m² (fine only)*
- (b) Industrial or Commercial building @ Rs. 50/- m² with a fine of Rs.60/- m².*

If deviation is made in construction as stated in byelaws (F.A.R. clearance etc.) after coming into force of this byelaw, a fine of Rs.600/- m² is to be imposed on deviated portion (i.e. F.A.R., clearance) etc.

If any residential building is constructed without sanction from this Parishad after implementation of this byelaw, a development fee of Rs.30/- m² with a fine of Rs.30/- m² is to be paid by the applicant."

Learned Advocate for the appellant says that on November 10, 2022, the appellant made an application

online for regularization of the impugned structure. Subsequently, after the order of the learned Single Judge was passed, a further application was made on January 13, 2023, wherein reliance was specifically placed on the aforesaid Rule 15. Learned Advocate says that all that the appellant is praying is that prior to implementation of the demolition order the application for regularization should be disposed of.

Learned Advocate for the respondent no.7 says that Rule 15 would not come to the aid of the appellant. The said Rule would apply only to constructions which were made before the Bye Law came into force. Insofar as construction of a residential building after implementation of the Bye Law is concerned, according to learned Advocate, Rule 15 only contemplates payment of fine and not regularization.

We are unable to agree with learned Advocate for the respondent no.7 insofar as his interpretation of Rule 15 is concerned. Reading the Rule as a whole, it is clear that the *Zilla Parishad* has the power under the said Rule to regularize constructions made without sanction, whether before or after coming into force of the 2005 Bye Laws.

Since a representation has been made, good, bad or indifferent, it may be appropriate for the *Zilla Parishad* to dispose of the representation before implementing the demolition order.

Accordingly, we direct the *Zilla Parishad* to dispose of the appellant's representation for regularization of the impugned structure by passing a reasoned order, in accordance with law and the applicable Rules and Regulations, within a period of four (4) weeks from the date of communication of this order by the appellant to the Competent Authority in the *Zilla Parishad*, after granting an opportunity of hearing to the appellant, respondent no.7 and any other concerned party or their authorized representatives. If the *Zilla Parishad* rejects the appellant's representation, it will forthwith proceed to implement the demolition order. Naturally, if the *Zilla Parishad* allows the appellant's representation to any extent, to such extent the demolition order will not be carried out.

The *Zilla Parishad*, while disposing of the appellant's representation for regularization, will not be influenced or bound by any observation in this order including our observation pertaining to Rule 15 of the 2005 Bye Laws.

We make it clear that we have not gone into the merits of the case. However, we express our general disapproval of anybody making construction without obtaining prior sanction from the appropriate Authority.

The order of the learned Single Judge is set aside.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 84 of 2023 and the connected application being IA No: CAN/1/2023 are disposed of.

Let urgent photostat certified copy 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.)