

08. 22.06.2023
bd. Ct.15

W.P.A. 455 of 2018

Pradip and Kumkum Ghosh Family Foundation & Anr.

-vs-

Panihati Municipality & Ors.

Mr.Chayan Gupta

Mr. Dwip Raj Basu

Mr. Romdeep Saha

Mr. Kaushik De

Ms. Mohini Majumder ... for the petitioners.

Mr. Koushik Bhattacharya

Mr. Joydeb Ghorai ... for the respondent no.3.

Mr. Rabindra Narayan Dutta

Mr. Hare Krishna Halder ... for the respondent
nos. 1 and 2

In the writ petition, inter alia, petitioners have prayed for demolition of all constructions carried out by the respondent no. 3 which have been made in alleged violation of sanctioned plan dated 18th February, 2014. Issuance of stop work notice against the respondent no. 3 has been prayed for in the writ petition and a mandamus has also been prayed for giving direction upon Panihati Municipality not to issue completion certificate in respect of the alleged illegal constructions made by the respondent no. 3.

Having considered the submissions made on behalf of the petitioners as well as learned advocates representing the Municipality and private respondent no. 3 it appears that the subject matter of challenge in the writ petition is a sanctioned building plan accorded by the concerned authority of Panihati Municipality dated 18th February, 2014.

The writ petition at the motion stage was admitted vide order dated 11th January, 2018 directing the parties to exchange affidavits but the question of maintainability of the writ petition in view of pendency of the other legal proceedings was kept alive. The order passed by the coordinate Bench on 11th January, 2018 was appealed against and the Hon'ble Division Bench disposed of the appeal vide order dated 4th July, 2018 with a direction upon the Panihati Municipality to file a report in the form of an affidavit before the learned Single Judge within fortnight from date. A report was prepared in the form of an affidavit which was affirmed on 16th December, 2018 but the same could not be filed contemporaneously and it has been submitted by the learned advocate representing the Municipality that erstwhile advocate for the municipality is indisposed which prompted the Municipality to affirm an affidavit afresh on 21st June, 2023 enclosing the copy of the report which was affirmed on 16th December, 2018. The affidavit affirmed on 21st June, 2023 enclosing copy of the report is filed today in Court which is taken on record. On perusal of such report it appears that apart from the sanctioned plan which was accorded initially on 8th June, 2010 for constructing school building in respect of ground floor and first floor the Municipality subsequently sanctioned revised building plan on 5th October, 2016 for construction of three storied building vide sanctioned plan no. 537 of 2016. It has also been averred in the report that on 13th July, 2017 the municipality granted completion certificate in favour

of the respondent no. 3 and subsequently on 24th May, 2018 completion certificate in respect of G+1 storied building for auditorium-cum-seminar hall was granted.

It has been submitted on behalf of petitioners that the affidavit enclosing report which has been filed today in Court has been made over to the learned advocate for the petitioners in course of hearing. Further, it has been submitted that the copy of the original report which has been enclosed in the affidavit which is filed today was made over to the learned advocate for the petitioners on 6th June, 2023. It has also been submitted on behalf of the petitioners that copies of revised sanctioned plan dated 5th October, 2016 and completion certificates dated 13th July, 2017 and 24th May, 2018 are required to be supplied to them for taking necessary steps in connection with the present writ petition.

Having considered the contents of the report which has been filed today pursuant to the order passed by the Hon'ble Division Bench dated 4th July, 2018 it appears that there is no challenge being thrown to the revised sanctioned plan dated 5th October, 2016 in the writ petition. In the writ petition a sanctioned plan alleged to have been accorded in favour of the respondent no. 3 dated 18th February, 2014 is under challenge.

In spite of receipt of report on 6th June, 2023 petitioners have not filed exception as directed by the Hon'ble Division Bench, on the contrary they have prayed for supply of subsequent revised sanctioned plan and completion certificates. This

Court has also extended the time to file exception which expired on 19th June, 2023.

Since it is revealed from the report that there was subsequent revised sanctioned plan dated 5th October, 2016 it appears that in absence of challenge to such sanctioned plan issue involved in this writ petition cannot be adjudicated.

There is requirement of an independent challenge being thrown to the subsequent revised sanctioned plan dated 5th October, 2016.

In view of aforesaid scenario the present writ petition stands disposed of by directing the Chairman of Panihati Municipality to supply copies of the revised sanctioned plan dated 5th October, 2016 and completion certificates dated 13th July, 2017 and 24th May, 2018 to the petitioners within fortnight from this date. On supply of aforesaid documents as directed by this Court petitioners shall be at liberty to take appropriate steps in accordance with law, if so advised.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)