

05. 18.12.2023
bd. Ct.15

W.P.A. 3988 of 2010

Smt. Gita Chatterjee & Anr.

-vs-

The State of West Bengal & Ors.

Mr. Kajal Ray ... for the Petitioner No.2.

Mr. Bipin Ghosh ... for the State.

Mr. D.N.Bose

Mr. Sujit Chowdhury ... for the respondent no.5

Mr. Suman Basu ... for the Chandannagore
Municipal Corporation

The writ petition centers around the plan which was sanctioned in connection with the holding No. 358-A under Ward No. 16 under the jurisdiction of Chandannagore Municipal Corporation.

Learned advocate representing the petitioner no.2 submits that initially a building plan was sanctioned dated 7th July, 2007 permitting the petitioner to make construction of the first floor on the existing old construction at the ground floor. However, it has been alleged on behalf of the petitioner that at the time of making construction in terms of the sanctioned plan dated 7th July, 2007 the local people at the instigation of the respondent no. 5 obstructed the petitioner to make construction as per the sanctioned plan. Subsequently, an order was passed by the concerned authority of Chandannagore Municipal Corporation dated 3rd May, 2008 cancelling the sanctioned plan dated 7th July, 2007 and the same was challenged by the petitioner by instituting a

writ petition being WPA 10366 of 2008. A coordinate Bench while disposing of the writ petition vide order dated 15th September, 2008 set aside the order dated 3rd May, 2008 whereby plan was cancelled. Thereafter, another writ petition being WPA 31144 of 2008 was preferred by the respondent no. 5 which was heard by another coordinate Bench and the same was dismissed vide order dated 17th February, 2009 in consideration of the fact that a Civil Suit being Title Suit No. 67 of 2008 was instituted by the respondent no. 5 and in connection with that suit no restraint order was obtained by the respondent no. 5 which would prevent the petitioner herein to make such construction. However, said writ petition was filed by the respondent no. 5 ventilating the grievance that in spite of the order passed by the coordinate Bench on 15th September, 2008 no subsequent steps were taken by the concerned authority of Chandannagore Municipal Corporation relating to the plan sanctioned in favour of the petitioner. Since at the material point of time the sanctioned plan dated 7th July, 2007 was subsisting the petitioner made endeavour to make construction but was prevented which triggered another writ petition being WPA 6390 of 2009 and Sanjib Banerjee, J. (As His Lordship then was) while disposing of the said writ petition passed an order dated 16th June, 2009 recording the submission made on behalf of the police authorities that if petitioner makes construction in terms of the sanctioned plan necessary assistance would be provided by the police authorities.

From the submissions made on behalf of

the parties to this writ petition it appears that in terms of the order dated 16th June, 2009 passed by Sanjib Banerjee, J. constructions were made at the aforesaid premises by the petitioners but according to the petitioner no.2 constructions could not be made complete due to local disturbances in terms of the said sanctioned plan dated 7th July, 2007. It is also stated that First Information Report was lodged in connection with the local disturbances which the petitioner faced while making constructions after disposal of the writ petition being WPA 6390 of 2009. According to the petitioner in spite of the orders passed by the coordinate Bench till date construction is not complete and at some places in the aforesaid premises due to demolition of the old constructions by the local anti socials at the time of agitation while making constructions petitioner was compelled to make new constructions at the ground floor, though as per sanctioned plan dated 7th July, 2007 corporation permitted the petitioner to make new constructions at the first floor on the existing ground floor.

In the present writ petition an interim order was passed on 30th November, 2011 whereby a coordinate Bench directed the concerned police authorities to provide assistance to the petitioner in order to enable the petitioner to carry out the constructions as per the sanctioned plan.

It is submitted by the learned advocate representing the respondent no. 5 that against the interim order passed on this writ petition dated 30th

November, 2011 an intra Court Appeal being MAT 1873 of 2011 was preferred before the Hon'ble Division Bench and while disposing of the appeal and the connected application the Hon'ble Division Bench vide order dated 11th January, 2012 set aside the interim order passed by the coordinate Bench on 30th November, 2011 and directed the learned Single Judge to decide the writ petition finally after exchange of affidavits by the respective parties to this writ petition.

On perusal of the said order dated 11th January, 2012 passed by the Hon'ble Division Bench it appears that the basis of setting aside the interim order dated 30th November, 2011 was granting of final relief to the petitioner vide said interim order.

Mr. Basu, learned advocate, representing the Chandannagore Municipal Corporation has drawn attention of this Court to the order dated 2nd/6th August, 2014 passed by the Commissioner Chandannagore Municipal Corporation wherefrom it appears that the Commissioner refused to revalidate the sanctioned plan dated 7th July, 2007 due to pendency of the present writ petition. Notice of this Court has also been drawn to a report dated 6th October, 2023 prepared on behalf of the Corporation which is annexed being annexure R1 to the affidavit-in-opposition used on behalf of the Corporation wherefrom it appears that the petitioner constructed two storied building at holding no. 358/A but nobody is staying at the said house and total covered area is 810.00 sq. ft. It is

also reported that the first floor is entirely newly built and some portions at the ground floor has been newly constructed and it has been stated therein that while making new constructions side space has not been kept open.

Respondent no. 5 is represented by learned advocate who submits that a Title Suit being 67 of 2008 was instituted seeking necessary declaration but it has been brought to the notice of this Court after instituting the suit no restraint order could be obtained by the respondent no. 5 in connection with the aforesaid suit and subsequently suit was dismissed for default. On the contrary, the suit which was instituted by the petitioner being T.S.36 of 2011 was decreed vide order dated 11th October, 2018 declaring that the petitioner being the plaintiff in the said suit was the absolute owner and possessor of the KA schedule property as described in the plaint. It was also declared therein KHA schedule property as described in the plaint, is a common passage/road for all and it is not a passage which is owned or which is meant for the Exclusive use of the followers and members of the Puja Committee being respondent no.5.

Having considered the chronology of facts which have been narrated by learned advocates representing the parties and in consideration of the order dated 2nd/6th August, 2014 of the Commissioner Chandannagore Municipal Corporation, whereby the Commissioner refused to take decision on the revalidation of sanctioned plan dated 7th July, 2007 which was accorded in favour

of the petitioner due to pendency of present writ petition, this Court finds that there is no impediment at present to direct the Commissioner of Chandannagore Municipal Corporation to take decision on the prayer of the petitioner for revalidation of the sanctioned plan dated 7th July, 2007.

Accordingly, the writ petition stands disposed of thereby directing the Commissioner of Chandannagore Municipal Corporation to take decision on revalidation of the sanctioned plan dated 7th July, 2007 taking into consideration the order of the civil court dated 11th October, 2018.

The Commissioner is directed to take such decision within a period of eight weeks from the date of communication of this order after granting opportunity of hearing to the petitioner or her representative and one of the representative of the respondent no. 5 and the decision to be taken by the Commissioner thereof to be communicated to the parties within one week thereafter.

At the time of passing order relating to revalidation of the original sanctioned plan dated 7th July, 2007 the Commissioner shall also consider whether the constructions made by the petitioner after obtaining the order dated 16th June, 2009 passed on a writ petition being WPA 6390 of 2009 is in consonance with the sanctioned plan dated 7th July, 2007 or not.

Affidavit-in-reply filed by the petitioner today

is taken on record.

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.)