

03. 03.08.2023
bd. Ct.15

W.P.A. 9944 of 2018

Sanjay Kumar Panja

-vs-

The State of West Bengal & Ors.

Mr. Piyush Chaturvedi

Mr. Sanjay Ghosh ... for the petitioner.

Mr. Uddipan Banerjee ... for the respondent no.9

Mr. Sandipan Banerjee

Mr. Ankit Sureka

Mr. Sobham Majumder ... For the HMC

The writ petition is presented, inter alia, challenging the order dated 3rd November, 2017 passed by the Commissioner, Howrah Municipal Corporation, pursuant to the order dated 13th October, 2015 passed by a coordinate Bench on a writ petition being WPA 21318 of 2015.

Mr. Chaturvedi, learned counsel representing the petitioner has questioned the validity of the impugned order dated 3rd November, 2017 on the score that there was a sanctioned plan accorded by the concerned authority of Howrah Municipal Corporation for constructing five storied residential building which had validity up to 8th September, 2003. It has also been submitted that such plan was sanctioned in favour of father of the petitioner. However, the father of the petitioner could not construct the building based on the said sanctioned plan. The father died and subsequently petitioner being the son sold out his portion of the property to the respondent no. 9 by executing a

conveyance deed. It has also been submitted that the respondent no. 9 is the second wife of the father of the petitioner. It is also submitted that after the death of father of the petitioner, petitioner had the right over 1/3rd share of the property in question and the purchaser being the second wife of the father of the petitioner had right over 2/3rd share of the said property.

It is also informed to this Court that civil suit is pending claiming inter se rights of the parties in connection with the premises in question.

According to the petitioner, the development agreement was made between the respondent no. 9 and the developer on 14th August, 2012 and based on such development agreement petitioner raised construction on the strength of the sanctioned plan which had life up to 8th September, 2003. Therefore, it has been submitted that the construction made by the respondent no. 9 is unauthorised and required to be demolished.

Such prayer of the petitioner is opposed by the learned advocates representing Howrah Municipal Corporation as well as respondent no.9.

It has been submitted on behalf of Corporation that on inspection it has been found that 16 square meter has been found to be constructed in deviation of the sanctioned plan which according to the corporation is a minor deviation. Another issue has been raised in the impugned order dated 3rd November, 2017 that

portion of first floor is being used for commercial purpose but at the same time it has been found by the Corporation after consideration of deliberation made on behalf of parties that demarcation of the portion which is being used for commercial purpose is not possible so far as the premises in question is concerned. It emanates from the impugned order dated 3rd November, 2017 passed by the Corporation that relating to the time of making construction by the respondent no. 9 corporation was not certain since the development agreement dated 14th August, 2012 is not a registered document and a stand has been made on behalf of respondent no. 9 that the construction was completed before 2003.

It has been submitted on behalf of respondent no. 9 that respondent no. 9 is the second wife of the father of the petitioner and has right over 2/3rd share of the property in question whereas petitioner was having right over 1/3rd share of the property. By executing deed of conveyance dated 23rd July, 2008, 1/3rd share of the property of the petitioner was sold out to the respondent no. 9.

It has also been submitted that construction has been made over the plot in question in terms of the plan sanctioned by the Howrah Municipal Corporation.

Having considered the submissions made on behalf of respective parties and on perusal of the materials available on record it appears that a plan was initially sanctioned in favour of the father of the

petitioner which had life up to 8th September, 2003 but the father could not make the construction. After the death of the father, 1/3rd of the land in question on which petitioner had the right has been sold out to the respondent no. 9 being the second wife of the father and subsequently construction has been made by the developer on permission being given by respondent no. 9. Whether respondent no.9 was authorised to construct the premises based on sanctioned plan which had life up to 8th September, 2003 needs to be considered based on the order passed by the Commissioner of Howrah Municipal Corporation dated 3rd November, 2017. On perusal of the said order dated 3rd November, 2017 it does not appear that the concerned authority of the corporation has expressed any concern over the structural stability of the construction made by the respondent no. 9 as per said plan which was originally sanctioned in favour of the father of the petitioner. It also appears that the construction is complete. There was a deviation to the extent of 16 square meter which has been found to be minor in nature.

At this stage if the contention of the petitioner as raised in this writ petition is accepted it would lead to a situation where the authority of the corporation would be required to demolish the entire construction made by the petitioner.

Had it been a case that there was no sanctioned plan at all granted in favour of the parties to make construction over the land in question then it would have been appropriate to

accept the contention of the petitioner but in the present case since there was a sanctioned plan granted in favour of the father of the petitioner and subsequently the petitioner sold out his share of land in favour of the second wife of his father and the respondent no. 9 being the second wife in her turn made construction; it would be improper at this stage to give direction for demolition of the construction made by the respondent no.9 on the premise that possibly at the time of making such construction initial plan sanctioned by the corporation was not alive.

In view of the aforesaid scenario this Court is not inclined to interfere with the order dated 3rd November, 2017 passed by Howrah Municipal Corporation.

Accordingly, the writ petition stands dismissed.

There shall be no order as to costs.

Reaffirmed affidavit-in-opposition filed by the respondent no. 9 in terms of leave granted by this Court on 27th July, 2023 is taken on record.

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

(Saugata Bhattacharyya, J.)