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rkd Ct.15

W.P.A. 14926 of 2017

Tara Sankar Koner & Ors.

-vs-

The State of West Bengal & Ors.

Mr. Pratip Kumar Chatterjee

....for the petitioners.

Mr. B. P. Vaisya,

Mr. Gourav Das

....for the State.

The grievance of the petitioners, four in number, is obstruction which is to be made upon construction of Rest House, Toilet and Passenger Shed in front of their shops by the Bhatar Panchayat Samity, District- Purba Burdwan.

The issue was considered by a coordinate Bench in connection with the previous writ petition being AST No.22 of 2017 which was disposed of upon directing the District Magistrate, Purba Burdwan to take decision upon consideration of the representation of the petitioners. It was also directed that the interim order restraining the respondent authorities from making further construction as was granted in the said writ petition would continue till two weeks after the date of receiving reasoned order to be passed by the District Magistrate.

Pursuant to the said direction of the coordinate Bench dated 22nd March, 2017 the issue

was considered by the authority and it was heard on two dates – 24th April, 2017 and 8th May, 2017. Based on such consideration order was passed by the District Magistrate, Purba Burdwan on 8th May, 2017 which is assailed in this writ petition.

While questing the decision of the District Magistrate dated 8th May, 2017 it has been contended on behalf of the petitioners that there is a specific direction by the coordinate Bench while passing order dated 22nd March, 2017 that the District Magistrate was directed to take decision on the representation of the petitioners but the petitioners when appeared before the authority on two consecutive dates on 24th April, 2017 and subsequently on 8th May, 2017 found that though on 24th April, 2017 District Magistrate heard the issue but subsequently on 8th May, 2017 Additional District Magistrate heard the matter in stead of District Magistrate which according to the petitioners is not permissible.

It has been argued that when direction has been given by the High Court to a particular authority to take decision, said authority cannot sub-delegate the issue to a subordinate authority for taking decision. It is the duty of the District Magistrate to hear the matter and take decision in

terms of the observation made by the coordinate Bench as contained in the order dated 22nd March, 2017.

Today State respondents are represented by the learned advocates who has made an attempt to defend the decision dated 8th May, 2017 but no affidavit-in-opposition has been filed by the State respondents in spite of an opportunity given to the State respondents to file the same.

Since no affidavit-in-opposition is used on behalf of the State respondents today this Court has to decide the issue based on the materials available on record.

While considering the submissions made on behalf of the respective parties and on perusal of the impugned decision dated 8th May, 2017 it transpires that there is substance in the contention made on behalf of the petitioners that when High Court gave a direction vide order dated 22nd March, 2017 upon the District Magistrate to take decision the Additional District Magistrate has no business to consider the issue upon conducting hearing on 8th May, 2017. The District Magistrate ought not to have delegated his power to the Additional District Magistrate to consider the grievance of the petitioners by conducting hearing on 8th May,

2017.

It also appears from perusal of the order dated 24th April, 2017 that the Block Development Officer, Bhatar was required to submit NOC which was to be taken from the concerned authorities of Public Works Department (PWD) for construction of the said Rest House. In the final order dated 8th May, 2017 surprisingly it appears Assistant Engineer, PWD, Burdwan Sub-Division vide memo no.1123 dated 2nd May, 2017 forwarded NOC in favour of the Executive Officer, Bhatar Panchayat Samity as well as Executive Engineer-I, PWD, Burdwan Division for construction at the site in question.

This Court fails to understand when there is a requirement of submitting NOC in connection with one construction which is to be erected by the Panchayat Samity the said NOC is required to be obtained prior to commencement of making such construction.

On reading of these two orders dated 24th April, 2017 and 8th May, 2017 it appears that the PWD Authorities as well as Panchayat Authorities treated this NOC as a mere formality not as requirement which needs to be obtained before commencement of such construction. Such stand

as taken with regard to obtainment of NOC after commencement of construction work is deprecated.

Accordingly, the order passed by the District Magistrate, Burdwan dated 8th May, 2017 stands set aside.

The District Magistrate, Burdwan is directed to take decision afresh in terms of the order passed by the coordinate Bench dated 22nd March, 2017 within a period of twelve weeks from the date of communication of this order after granting opportunity of hearing to the petitioners or their representatives.

However, it is made clear that respondent authorities are restrained from making further constructions at the site in question till four weeks from the date of receiving order by the petitioners from the respondent no.3

With the aforesaid direction the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)