

D/L
Item No. 05
12.09.2023
KOLE

**MAT 1494 of 2023
With
IA CAN 1 of 2023
With
IA CAN 2 of 2023**

**Shantanu Deb & Anr.
-Vs.-
The State of West Bengal & Ors.**

*Mr. Sibaji Kumar Das,
Mr. D. Bramha,*

...for the appellants.

*Mr. Shehnaz Tareq Mina,
Mr. Ranjit Rajak,*

...for the State.

*Mr. Amales Ray,
Ms. M. Bhowal,
Mr. I. Bhattacharyya,*

...for the respondent nos. 9 and 10.

In Re: CAN 1 of 2023 in MAT 1494 of 2023:

This is an application for condonation of delay of 48 days in presenting the appeal as noted by the Additional Stamp Reporter.

Causes shown being sufficient, we condone the delay.

CAN No. 1 of 2023 is, thus, allowed.

In Re: MAT 1494 of 2023 and CAN 2 of 2023:

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

This appeal is directed against a judgment and order dated May 18, 2023, whereby the appellants' writ petition being WPA 1126 of 2023 was disposed of by a learned Single Judge of this Court.

In the impugned order the learned Single Judge noted that the writ petitioners are aggrieved because the respondent no. 9/promoter “has not given the car parking space as promised to the writ petitioners, by violating terms of the agreement for sale. The writ petitioners alleged that the Panchayat Authorities have been informed about such illegal action of the promoter, but the Panchayat Authorities have remained silent”.

It was submitted on behalf of the promoter that a 120 sq. ft. parking space has been allotted in favour of the writ petitioners. There is adequate parking space for the writ petitioners to park their cars and they are in no way affected by any alleged action or inaction of the promoter.

The learned Judge disposed of the writ petition with the following observations:

“Having heard the learned advocates for the respective parties, this Court is of the view that the dispute between the purchasers and the promoter cannot be resolved by the panchayat authorities. The panchayat authorities could have taken action if the promoter had constructed without a sanction plan or in deviation thereof. The plan has been produced. The plan indicates that four parking spaces and four proposed parking spaces had been provided for in the sanctioned plan.

The private dispute between the petitioners and the promoter has to be decided in a suit. The petitioners are at liberty to file a suit for specific performance of contract. However, the promoter is required to construct strictly in accordance with the sanctioned plan.”

Being aggrieved, the writ petitioners have come up before us by way of this appeal.

Mr. Das, learned Advocate, representing the appellants/writ petitioners says that the grievance of the writ petitioners is completely different from what has been recorded by the learned Single Judge. The complaint is that although the sanctioned building plan provide for four car parking space, the promoter has made eight car parking space. This is unauthorized and an unacceptable deviation from the sanctioned plan.

Mr. Roy, learned Advocate, appearing for the promoter/respondent no. 9 says that his client has not made any unauthorized construction. The entire construction is in strict accordance with the sanctioned plan.

Having gone through the writ petition, we find that indeed the allegation of the writ petitioners is that unauthorized car parking space has been made by the promoter. This allegation is denied by the promoter.

We direct the Pradhan, being the respondent no. 7 of the Kheadha-II Gram Panchayat, to conduct an enquiry into the matter for the purpose of ascertaining whether there is merit in the grievance of the appellants/writ petitioners. For that purpose, the Pradhan shall treat the contents of the writ petition as a representation of the appellants. The Pradhan shall cause appropriate local inspection to be made in the presence of the parties and shall take a reasoned decision in the matter, in accordance with law and the applicable rules and regulations and the building plan that the promoter holds, within a period of eight weeks from the date of communication of this order to the Pradhan along with a

copy of the writ petition, after affording an opportunity of hearing to the concerned parties including the appellants and the respondent no. 9 herein. The order to be passed by the Pradhan shall be communicated to the parties within a week from the date of the order. Depending on the order, further consequential actions may be taken by the Pradhan in accordance with law.

We make it clear that we have not gone into the merits of the case. The Pradhan will take an informed decision in accordance with law.

The order under appeal is set aside.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)