

02. 18.01.2023
Ct. No.6
Tanmoy

MAT 1362 of 2021

**Dr. Lalit Kumar Maji & Ors.
-Versus-
The State of West Bengal & Ors.**

**With
IA No: CAN/1/2021**

Mr. Manik Lal Poddar, Adv.,
Mr. S.K. Sarkar, Adv.,
Mr. S. Dutta, Adv.

...for the appellants.

Mr. Himadri Sikhar Chakraborty, Adv.,
Mrs. Neelam Singh, Adv.

...for the State.

Mr. Buddhadev Ghoshal, Adv.,
Mr. Souri Ghoshal, Adv.

...for the private respondents.

Mrs. Monjuli Chowdhuri, Adv.,
Mrs. Mekhla Sinha, Adv.

...for the Howrah *Zilla Parishad*.

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

This appeal is directed against a judgment and order dated November 30, 2021, whereby the writ petition of the appellants being W.P.A. No. 16884 of 2019, was disposed of by giving certain directions.

The appellants approached the learned Single Judge saying that they are the owners of a *Bastu* land situated at Mouza – Bankul, J.L. No.7, L.R. *Dag* No.2614, in Jagatballavpur Police Station. Their grievance before the learned Single Judge was that the respondent nos. 5 to 9

(private respondents) have been raising a construction on the adjacent *Dag* No.2615 without leaving requisite side space.

It appears from the order impugned that earlier, the appellants had filed a writ petition challenging the construction in question. A learned Single Judge had directed the District Engineer, Howrah *Zilla Parishad* to dispose of the complaint of the appellants/writ petitioners by passing a reasoned order within two months. Such order was passed on November 30, 2018. The District Engineer, Howrah *Zilla Parishad*, did find certain deviations from the sanctioned plan.

The present writ petition was filed by the appellants for demolition of the unauthorized portion of the construction as found by the District Engineer, Howrah *Zilla Parishad*.

The learned Judge noted that a civil suit is pending wherein the appellants herein are plaintiffs and have prayed for declaration and injunction against the private respondents herein. In such suit, there is an *interlocutory* order of injunction restraining the defendants in the said suit from making any construction in deviation from the sanctioned plan. Initially, the *ad interim* order of injunction was passed *ex parte*. Thereafter, the order was carried by way of revision to this Court and a learned Single Judge affirmed the order. In that view of the matter, the learned

Single Judge disposed of the writ petition with the following observation:-

“As it is the observation of the District Engineer, Howrah Zilla Parishad that there has been violation of sanction plan at least one construction of being a cantilever, this writ petition is disposed of with a direction upon the petitioners to move the appropriate application before the appropriate forum as also the Civil Court alleging violation of the injunction order and also pray for modification of the order of injunction. If such application is filed, the same shall be disposed of in accordance with law. The petitioners shall be entitled to file an appropriate application for variation, modification of the injunction order on the strength of the observation of the District Engineer, Howrah Zilla Parishad, which was issued on the basis of a direction of this Court. Although it is not for the Civil Court to decide and take steps with regard to unauthorised construction, the petitioners are being relegated to the Civil Court only because of the order passed by the civil court in respect of such construction and upheld by this Court. The applications to be filed by the petitioner shall be disposed of by the civil court within two months from date of filing.

The petitioners shall also be at liberty to add the Pradhan, Jagatballavpur 2 No. Gram Panchayat and Howrah Zilla Parishad as defendants in the suit by making appropriate application, which shall be decided in accordance with law upon hearing the parties.”

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

We have heard learned Counsel for the parties. Learned Advocate for the appellants prays for immediate demolition of the unauthorized portion of the construction in question.

Learned Advocate for the private respondents says that the deviation is minor in nature. An application has been made before the concerned *Gram Panchayat* for regularization of such deviation. The *Panchayat* has the

power as per the Bye-laws 15 of Howrah *Zilla Parishad* to regularize minor deviations.

We are not inclined to go into the question of whether or not the *Panchayat* should or could regularize the deviation in question.

The fact remains that an application has been made by the private respondents for regularization of deviation. We direct the respondent nos. 4 and 5 being the concerned *Gram Panchayat* and its *Pradhan*, to dispose of the application for regularization made by the private respondents herein, in accordance with the applicable Rules, by a reasoned order, within a period of four (4) weeks from the date of receipt of a copy of this order from the appellants, after giving an opportunity of hearing to all concerned parties including the appellants and the private respondents herein. In the event, the *Panchayat* allows the application of the private respondents, naturally, the deviation shall stand regularized and no further question of demolition will arise.

However, if the *Panchayat* rejects the application of the private respondents, then the private respondents shall forthwith and definitely within a period of a fortnight from the date of the *Panchayat's* rejection order, remove the unauthorized construction. If the private respondents fail to do so, the Howrah *Zilla Parishad* shall do so immediately at the cost of the private respondents.

The order impugned stands modified to the aforesaid extent.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 1362 of 2021 and the connected application being IA No: CAN/1/2021 are disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties, upon compliance with all necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)