

MAT 1431 of 2022
with
IA No. CAN 2 of 2022
with
IA No. CAN 3 of 2022

(Ganesh Chandra Patra Vs. The State of
West Bengal & Ors.)

Mr. Kamalesh Bhattacharya
Mr. Rahul Karmakar
Sk. Julfikar
Mr. S. S. Bhuroria
Mr. Sounak Mukherjee
Ms. Gargi Goswami

.... For the appellant

Mr. Sirsanya Bandyopadhyay
Mr. Arka Kumar Nag
Mr. Tirthankar Dey

..... For the B.M.C.

Mr. Arindam Banerjee
Mr. Rupayan Deb
Ms. Priya Nandy

..... For the private respondents

The present appeal has been preferred challenging an order dated 8th July, 2022 passed in a writ petition being WPA 6776 of 2022.

The said writ petition was preferred challenging *inter alia* an order of demolition passed by the Commissioner, Bidhannagar Municipal Corporation (in short, the Corporation) communicated *vide* memo dated 29th March, 2022.

Mr. Bhattacharya, learned advocate appearing for the writ petitioner/appellant submits that the writ petition was dismissed and the order of demolition was affirmed without considering the specific contention of the appellant that the minor deviations at the 2nd floor level

of the concerned building were regularized by the Rajarhat-Gopalpur Municipality (in short, the Municipality) and a completion certificate was issued after accepting the necessary charges.

He argues that the learned Judge refused to exercise discretion in favour of the appellant without appreciating that the specific dimensions of the alleged unauthorized portion were not even incorporated in the order of demolition and that the demolition order was a vague and unreasoned one.

He submits that the initial sanction plan issued in the favour of the appellant was subsequently revised but at the time of filing of the writ petition, the appellant could not annex the revised sanction plan, as referred to in the writ petition, since it was misplaced. Had the said revised plan been taken into consideration, the conclusion would have been otherwise. In support of such contention, Mr. Bhattacharya has drawn our attention to the averments made in an application filed under Order 41 Rule 27 of the Code filed in the present appeal.

Drawing our attention to a purported revised plan annexed to the affidavit-in-exception used by the appellant to the inspection report filed by the Corporation, Mr. Bhattacharya submits that sanction date was 10th September, 2007 and Chairman of the Municipality had signed the said plan and as such its

authenticity cannot be doubted. The revised plan was misplaced by the appellant and the same was not in his possession at the time of filing of the writ petition and as such the order impugned in the present appeal and the order of demolition need to be set aside granting an opportunity to the appellant afresh to advance his arguments before the competent authority placing reliance upon the said revised plan.

Drawing our attention to the documents annexed at pages 51, 53 and 54 of the stay application and page 4 of the affidavit-in-exception, Mr. Bhattacharya submits that the initial plan was reconfirmed and revised and a perusal of the same would clearly reveal that the second floor plan included an open terrace along with a toilet, a room and a Puja space. The appellant had raised the construction on the basis of the said revised plan and as such, the order of demolition is not sustainable in law.

Mr. Bandyopadhyay, learned advocate appearing for the Corporation denies and disputes the contention of the appellant and argues that the story of a revised plan has subsequently been manufactured by the appellant. There was only one sanction plan no. 776/02/03 in respect of the appellant's building pertaining to which an occupancy certificate was issued on 10th September, 2007 referring to the completion certificate as C6/152/07/08. The said document clearly records that the occupancy certificate had been issued for a two-

storied building and such fact stands confirmed by the sanction plan as annexed at page – 54 of the stay application. The document at page – 51 of the stay application would also reveal that the Municipality received the fees pertaining to the completion certificate CC/152/07/08. The alleged revised plan annexed to the affidavit-in-exception also refers to building plan no. 776/02/03, completion certificate being C6/152/07/08 and in the drawing an open terrace along with a toilet, a room and a Puja space had been added in a most illegal and *mala fide* manner to mislead the Court.

He further submits that no copy of such alleged revised plan is in the records of the Corporation and no such document was also handed over to the Corporation at the time of merger of the Municipality with the Corporation. The signature of the Chairman also does not tally with the signature of the Chairman affixed in the other available records of the Corporation. A new case had been made out at the appellate stage having failed to point out any infirmity in the order of demolition issued by the competent authority.

He further submits that there is no averment in the writ petition and in the application being CAN 2 of 2023 pertaining to any revised plan subsequently sanctioned by the Corporation and on the contrary, the prayers of the writ petition would reveal that the writ petitioner prayed for a direction for regularization of the structure.

Mr. Banerjee, learned advocate enters appearance on behalf of the private respondents and denies and disputes the contention of the appellant.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, a physical inspection was conducted by the Corporation on 23rd March, 2022. At the time of such inspection and in the presence of the appellant, the deviated portion which was beyond the sanctioned building plan was identified. Notice was issued prior to issuance of the order impugned in the writ petition. In the said order it was recorded that *‘during inspection it has been found that the respondent has constructed unauthorised construction at second floor level, comprising a room, toilet and Puja room and also a terrace over these constructions, which is beyond the sanctioned building plan submitted by the respondent himself. These constructions are also not reflected in the CC, issued by the then Rajarhat Gopalpur Municipality’*. The appellant initially contended that minor deviations were regularized and later a stand had been taken that there was a revised plan. In view of such contradictory stand and the attempt on the part of the appellant to patch up the weak points in the case and to fill up the lacunae at the appellate stage, no interference is called for in the present appeal.

The learned Single Judge upon dealing with all the factual issues has arrived at specific findings and we do not find any error in the same. The order impugned in the appeal does not suffer from any jurisdictional error or any manifest injustice warranting interference of this Court.

The appeal and the connected applications are, accordingly, dismissed.

There shall, however, be no order as to costs.

Mr. Bhattacharya prays for stay of operation of this order. Such prayer is considered and rejected.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)