

07. 21.08.2023
Ct.15

bd.

W.P.A. 22025 of 2018

Nemai Chandra Kundu & Ors.

-vs-

The State of West Bengal & Ors.

Mr. Bibek Jyoti Basu

Mr. Uttam Kumar De

Ms. Rubi Sharma ... for the petitioners.

Mr. Suddhadeb Adak ... For Arambagh
Municipality.

The writ petition is taken up for consideration in presence of the learned advocates representing the petitioners and Arambagh Municipality. However, State respondents remain unrepresented.

Mr. Basu, learned counsel representing the petitioners submits that there was a valid sanctioned plan based on which petitioners made an attempt to construct five godowns but the petitioners were prevented in making constructions as a result whereof subsequently the sanctioned plan expired.

Submission has been made on behalf of petitioners in view of expiry of the sanctioned plan as alleged that either the said sanctioned plan which was issued in 2014 needs to be renewed/extended or proper compensation needs to be paid to the petitioners for preventing the petitioners from making constructions based on the sanctioned plan approved by the concerned authority of Arambagh Municipality. It has also been alleged that within the lifetime of the sanctioned plan effort was made in 2018 to make constructions but the petitioners were prevented.

Mr. Adak, learned advocate, representing Arambagh Municipality has opposed the prayer of the writ petitioners placing reliance on the order dated 24th February, 2021 passed by the Hon'ble Division Bench on an intra court appeal being MAT 70 of 2020 which was preferred by the present writ petitioners. It has been submitted that the Hon'ble Division Bench has observed in the said order dated 24th February, 2021 that the plan which was sanctioned in favour of the writ petitioners herein is non-est on the ground of misrepresentation. It has been submitted on behalf of the Municipality that since it has already been decided by the Hon'ble Division Bench in the order dated 24th February, 2021 that the plan was obtained by misrepresentation extension or renewal of sanctioned plan is not permissible.

This Court has heard the learned advocates representing the parties and perused the materials available on record and has taken note of the observations made by the Hon'ble Division Bench in the order dated 24th February, 2021. The Division Bench has succinctly decided in the order dated 24th February, 2021 with regard to the sanctioned plan issued in favour of the petitioners in the following manner.

“What can be reasonably inferred from the observations recorded in the said order, which has not been challenged by the appellants, in a validly instituted proceeding that the objection put forth against the writ petitioners

was taken note of and since it strikes at the root of the decision taken at the time of sanctioning the building plan, no further order either of the renewal /extension or otherwise has been passed. Logically what can be inferred from the said order that the sanctioned building plan is no more in existence and there has been a serious dispute on the ownership claimed by the writ petitioners. If such decision has been taken and still operative, the question of renewal /extension of the non-sanctioned building plan does not arise at all. If the plan has not been found to be alive as on the date, such plan cannot be extended, as it comes within the mischief of the provisions of the said Act.”

It is pellucid from the aforesaid observations made by the Hon’ble Division Bench that the original permission/sanctioned plan has been found by the authority that the same has been issued on misrepresentation since the order was passed by the competent authority on 26th August, 2019. The order dated 26th August, 2019 also reveals that there is a dispute on the ownership of the property since the person claiming rightful title therein has submitted various documents including judgment of the civil

court.

In view of the aforesaid scenario this Court is not inclined to pass order in the present writ petition and accordingly the same stands dismissed.

However, there shall be no order as to costs.

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

(Saugata Bhattacharyya, J.)