04.01.2023
Item No.09
Court No.6.
S. De

M.A.T. 1938 of 2022
with
I.A. No. CAN/1/2022

Bitam Paul.
Vs
Chandannagore Municipal Corporation & Ors.

Mr. Ashok Kumar Banerjee, Ld. Sr. Adv.
Mr. Sudip Ghosh Chowdhury,
Mr. A. Bose,
Ms. Bina Baidya,
…for the appellant.

Mr. Sandip Kumar Bhattacharyya,
Mr. Suman Basu,
…for the C.M.C.

This appeal is directed against a judgment and order dated December 1, 2022, whereby the appellant's writ petition being W.P.A. 26397 of 2022 was dismissed.

The appellant/writ petitioner claims to be the Secretary of the Managing Committee of Pearl Rosary School, a Co-educational English Medium School, affiliated to the West Bengal Board of Secondary Education, situate at 540, Mankundu Station Road, Police Station and Post Office – Chandannagar, District – Hooghly, West Bengal (in short 'the school').

It appears that the Managing Committee obtained sanction from the Chandannagar Municipal Corporation (in short 'CMC') for constructing a G+3

storied building. Our attention has been drawn to page 51 of the stay application which is a building plan for proposed four storied (G + III) residential building of “Pearl Rosary School”. Such building plan was sanctioned. Construction of a G + III storied building was made. However, instead of the building being used for residential purpose, a school started operating from the building. The appellant says that a portion of the building is used also for residential purpose to accommodate students who come from far away.

It is not in dispute that a fourth floor has been constructed by the Managing Committee of the School and a fifth floor is under construction. However, these constructions are without any sanctioned plan from the CMC. We are told that construction work on the fifth floor has been stopped by the school authorities upon receiving stop-work notice from the C.M.C.

Proceedings were initiated by C.M.C. against the Managing Committee of the School for unauthorized construction. This was preceded by several show-causes notices which were not responded to by the School Authorities. Hearing took place where the School representatives were heard. Ultimately, an order dated September 21, 2022, was passed by the Commissioner of C.M.C., the operative portion whereof reads as follows :-

"Moreover, the proposal for regularization cannot be considered by this corporation in view of the fact that the law does not empower & permit this authority to allow retention or regularization of even minor deviations.

Hence, it is observed that the Management of the Pearl Rosary School has willfully & deliberately violated in following issues :-

1. *There are illegal Constructions in all floor of G+III Building @ 16 Sq.ft per floor amounting to 64 Sq.ft beyond sanctioned Building plan.*
2. *The Building plan was sanctioned for residential purpose but being used for running a private school purpose. So, their very intention was wrong from the initial stage.*
3. *They have taken up further illegal constructions for 4th floor & 5th floor without obtaining any valid sanctioned Building plan @ 1912 Sq.ft per floor.*
4. *The Management is playing with the security of the lives of the students, teachers as well as other staff and running the school with huge no. of students where illegal constructions are simultaneously being done at the 4th & 5th floors without any valid sanctioned plan. The management is showing insensitivity and irresponsibility to the lives of the students. There are possibilities of any type of mishap as accident for such illegal construction without sanctioned building*

plan and as such, the lives of the students teaching & non-teaching staff at the school are at stake.

5. *The school authority did not respond to several show cause notices and orders for stop work/construction.*

To stop such illegality & to make the school management more sensitive and to remove the possibility of any mishap or accident, some urgent actions are required.

***Hence, it is hereby ordered that** :-*

*1. The management (Represented by : 1. Bitan Paul, the present Secretary of the Managing Committee of the School. 2. Ranjana Chakraborty, the Head Mistress of the School. 3. Piyali Chatterjee, the Asst. Head Mistress of the Pearl Rosary School shall demolish all the illegal constructions at their own cost of the said building within **14 (Fourteen)** days from the date of receipt of the copy of this order failing which Chandernagore Municipal corporation reserves the right to demolish the illegal constructions and all the expenditures of demolition work will be charged upon the Management of the Institution i.e. the said Pearl Rosary School.*

2. The G+III storied building can only be used for residential purpose, not at all for running a school/or any work of commercial nature.

3. The Corporation shall lodge a police complaint against the management for taking steps so that the management can

be restrained from playing with the lives of the students, teaching & non-teaching staff of the school.

All concerned be informed accordingly."

The aforesaid order of the Commissioner of C.M.C. was the subject matter of challenge before the learned Single Judge.

Before the learned Single Judge, the appellant argued that the Commissioner did not have authority to issue the demolition order. The learned Judge observed and rightly so, that under the West Bengal Municipal Corporation Act, 2006, the Commissioner is the competent authority to issue order for demolition of illegal/unauthorized construction.

The learned Judge also noticed that a School was being run from the said premises without obtaining Completion Certificate.

The learned Judge dismissed the writ petitioner with the following observations :-

"From the documents annexed to the writ petition and on perusal of the impugned order of demolition, it appears that the said order was passed upon giving opportunity of hearing to the representatives of the school. The names of three of the representatives of the managing committee of the school who

were present in the hearing are mentioned in the impugned order.

The school authority was given several show cause notices and orders for stopping the construction work; none were responded by the school.

The Corporation lodged FIR before the police. The Commissioner being apprehensive of mishap or accident passed the order of demolition.

The school is admittedly making construction without the proper sanctioned plan and is occupying and using the building without a completion certificate. Both are impermissible in law.

According to the provisions of law, construction can be made only after obtaining permission/sanction and not prior thereto. Construction always follows the sanction which is granted and it is not the other way round when construction is made prior to sanction being granted.

Any interference with the order of demolition will send out a very wrong message to the students of the school, the teachers and the public at large that regularization may be sought for of the construction which has been made without obtaining a prior sanction plan.

The Commissioner being the competent authority issued the order of demolition after complying with the principle of natural justice. There is no apparent error in the order impugned requiring interference."

Being aggrieved, the writ petitioner is before us by way of this appeal.

Appearing for the appellant, Mr. Ashok Kumar Banerjee, learned senior counsel argued that the demolition order has been passed in breach of the principles of natural justice. He submitted that the proceedings for demolition culminating in the demolition order, were initiated pursuant to complaints lodged by local people. However, copies of such complaints were not made available to the School authorities. This would amount to breach of the salutary principle of natural justice vitiating the entire proceedings resulting in the demolition order. We are unable to agree with Mr. Banerjee. It is not in dispute that unauthorized construction has been made by the School authorities. Whether the C.M.C. authorities initiated action and ultimately issued demolition order pursuant to complaints made by local people or suo motu, is completely irrelevant. It is the duty of C.M.C., which is a statutory Corporation, to ensure that no construction is made without obtaining prior sanction and if any illegal construction is made, the same should be demolished. There has been no violation of the principles of natural justice in this case. To the extent, such principles apply, they have been observed. The School authorities were heard

sufficiently by the C.M.C. authorities and only then the demolition order was passed.

Mr. Banerjee then submitted that after completion of each floor, the C.M.C. authorities were satisfied that the same were in accordance with the sanctioned plan. Now the authorities cannot take a contrary stand. We are also unable to appreciate this submission. The major controversy is with respect to the fourth floor and the partially constructed fifth floor. The C.M.C. authorities never sanctioned such construction. As regards the excess construction on the other floors, we cannot and should not restrain C.M.C. from carrying out its statutory duties. Even if they did not object to the excess construction in the ground, first, second and third floors, that does not mean that they are precluded from declaring such excess construction as authorized or illegal.

Mr. Banerjee then submitted that his client made an application for sanction of the fourth and fifth floors on the e-portal of C.M.C. Such application was never considered by the authorities. In the mean time, Covid intervened. The School needed larger space to accommodate the students. Hence, the fourth floor was constructed.

We cannot accept the justification sought to be advanced by learned senior counsel. Section 266 of the West Bengal Municipal Corporation Act, 2006,

prohibits any construction without prior sanction of the sanctioning authority. However pressing may have been the need of the school authorities, they could not have constructed additional floors without having proper building plan sanctioned from the C.M.C. authorities.

Mr. Banrjee relied on a decision of the Hon'ble Supreme Court in the case of ***M/s. Rajatha Enterprises –Versus- S.K. Sharma & Ors.*** reported in ***AIR 1989 Supreme Court 860*** to contend that in an appropriate case, the Court may direct that construction made without having sanctioned plan, should remain and need not be necessarily demolished. Mr. Banerjee said that the present case is such a case. Again, with great respect, we cannot agree. The facts of the aforesaid Supreme Court case were completely different from the facts of this case. On an overall consideration of the facts of that case, the Hon'ble Court was of the view that High Court ought not to have directed demolition of the impugned construction. Further, the Supreme Court observed that there was no evidence of public safety being in any manner endangered or the public or a section of the public being in any manner inconvenienced by reason of the unauthorized construction. We do not find that any declaration of law was made in that decision.

Mr. Banerjee also referred to a decision of the Hon'ble Supreme Court in the case of ***The Comptroller & Auditor General of India, Gian Prakash, New Delhi & Anr. Versus K.S. Jagannathan & Anr.*** reported in ***AIR 1987 SC 537*** to contend that the power of the High Court under Article 226 of the Constitution is very wide and any order can be passed for the ends of justice. We have no quarrel with such proposition. However, this is not a case where we are inclined to exercise our jurisdiction under Article 226 of the Constitution to grant relief to the appellant.

Finally, Mr. Banerjee, questioned the validity of the Commissioner's demolition order on the ground that the Chandannagar Municipal Corporation Act, 1990 was never duly published. In this connection Mr. Banerjee referred to a decision of the Hon'ble Supreme Court in the case of ***Collector of Central Excise Versus New Tobacco Co.*** reported in ***AIR 1998 Supreme Court 668***. In that case it was decided that a Central Excise notification can be said to have been published, except when it is provided otherwise, only when it is so issued as to make it known to the public. This decision was rendered in a totally different factual scenario. The crux of the decision was that unless the members of the public became aware of the notification, the notification

cannot be said to have been duly published. In the present case, nobody has contended that the members of the public are not aware of the contents of the Chandannagar Municipal Corporation Act, 1990 or the West Bengal Municipal Corporation Act, 2006 which repealed and replaced the 1990 Act. In our considered opinion, the aforesaid Supreme Court decision has no manner of application to the facts of the present case.

It has also been drawn to our attention by Mr. Bhattacharyya, learned counsel appearing for Chandannagar Municipal Corporation that page 66 of the stay petition is an incomplete xerox copy of a document. He has produced a xerox copy of the complete original document which is really a show-cause notice. The portion requiring the School authorities to show cause has been suppressed. The writ Court is a Court of equity. One who approaches the writ Court must do so with clean hands. In our view, the appellant has not done so. This is an additional ground on which he is not entitled to any equitable relief.

We are completely in agreement with the order of the learned Single Judge. Persons who take law into their own hands deserve no leniency. The regulatory Acts like the West Bengal Municipal Corporation Act, 2006, have been promulgated with a purpose. Reckless and unscrupulous people by putting up

unauthorized construction, seek to defeat that purpose. They deserve no sympathy.

The appeal being MAT 1938 of 2022 is dismissed along with the application being I.A. No. CAN 1 of 2022.

The appellant and the School authorities are directed to ensure that before the demolition activity is carried out, the entire building is vacated to obviate any possible safety hazard to the children or anybody else.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.) **(Arijit Banerjee, J.)**