

22.11.2023
Item No.88
Court No.1
CHC

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

M.A.T.133 of 2023
I.A NO: CAN/1/2023

Chandmoni Uttorayan Welfare Society
Vs.
The State of West Bengal & ors.

Mr. Jayanta Kr. Mitra, Sr. Advocate
Mr. Ajay Singhal, Advocate
Mr. Abhishek Singh,
... .. For the **appellant/writ**
petitioner

Mr. Subir Kumar Saha, Advocate
Mr. Momenur Rahman, Advocate
... .. For the State

Mr. Ratnanko Banerje, Sr. Advocate
Mr. Deepan Kumar Sarkar, Advocate
Mr. Ashika Daga, Advocate
Mr. Deborshi Dhar, Advocate
Mr. Jishnujit Chowdhury, Advocate
... .. For the respondent no.7

Mr. Aniruddha Chatterjee, Advocate
Mr. Subham Ghosh, Advocate
Mr. Mayank Roy, Advocate
Mr. Arjun Samanta, Advocate
... .. For the respondent nos. 11 to 17

Mr. Raja Saha, Advocate
Mr. Subham Chanda, Advocate
... .. For the SJDA

The appeal is directed against an order dated August 16, 2023 passed by the learned Single Judge in WPA 988 of 2019 and the connected applications therein.

By the impugned order, the learned Single Bench was pleased to hold that since the writ petitioner/appellant was beneficiary of illegality the writ petitioner/appellant was precluded from assailing any illegality on the part of the respondents, having obtained the benefits of such illegality.

Learned Senior Advocate appearing for the appellant/writ petitioner submits that, the question of the writ petitioner/appellant being beneficiary of any illegality does not arise. Assuming though not admitting that, the writ petitioner/appellant was beneficiary of such illegality, none the less, since the writ petitioner/appellant was complaining of violation of statutory provisions and the site plan, the writ petitioner/appellant was vested with the requisite locus to maintain the writ petition. The locus of the writ petitioner/appellant to maintain the writ petition was finally decided by the Division Bench on March 11, 2022. None of the parties to the writ petition assailed such decision of Division Bench. He submits that, the impugned order does not allude to the facts of the case and that, the impugned order does not consider the respective contentions of the parties.

Learned advocate appearing for the respondent nos.11 to 17 submits that, his clients are purchasers of plots in the subject project. He draws the attention of the Court, that initially the

writ petition was dismissed on the ground of locus by an order dated September 24, 2021. Such order was assailed before the Division Bench. The appeal was disposed of by a judgment and order dated March 11, 2022. He contends that, there subsists an order passed by the Hon'ble Supreme Court in a Special Leave Petition dated February 13, 2023 directing that the issue of maintainability to be decided by the learned Single Judge. He submits that learned Single Judge decided maintainability issue correctly in the impugned order.

State is represented.

Learned advocate appearing for the SJDA (Siliguri Jalpaiguri Development Authority) submits that no illegality was committed and that, learned Single Judge dismissed the writ petition correctly.

Learned advocate appearing for the respondent no.7 submits that, the members of the writ petitioner/appellant were made over flats in accordance with the handover agreement. The terms and conditions of the handover agreement or the alleged violations thereof cannot be made the subject-matter of a writ petition. He contends that, there is no violation of the handover agreement and therefore, on such score also, the writ petitioner/appellant does not possess any cause of action to maintain the writ petition. He contends that, the impugned order correctly decided the issue of maintainability.

Apparently, the respondents before writ court raised various issues of maintainability including locus standi of the writ petitioner to maintain the writ petition. Initially, the writ petition was

dismissed by an order dated September 24, 2021 on the ground of lack of locus standi of the writ petitioner to maintain the writ petition. An appeal which preferred therefrom was disposed of by a judgment and order dated March 11, 2022. The Division Bench, held that, the writ petitioner/appellant was with the requisite locus to maintain the writ petition. None of the parties in the writ petition carried any Special Leave Petition before the Hon'ble Supreme Court directed against the judgment and order dated March 11, 2022 of the Division Bench. The decision of locus therefore attained finality.

Thereafter, in the writ petition, an interim application was filed seeking reliefs with regard to construction being made at the locale. Aggrieved by the order passed in such interim application, an appeal was carried. The matter ultimately reached the Hon'ble Supreme Court by way of a Special Leave Petition which was disposed of by an order dated February 13, 2023.

The Special Leave Petition was disposed of by Hon'ble Supreme Court by the order dated February 13, 2023 which is as follows:

"The issue raised in this Special Leave Petition pertains to various orders passed by the learned Single Judge as well as Division Bench of High Court passed interregnum on preliminary issues including the question of maintainability and other preliminary objections (except locus).

Learned counsel for the parties are not at issue that it would be appropriate that main matter pending before the High Court may itself be decided on merits within a reasonable time.

Mr. Kunal Chatterjee, learned counsel appearing for some of the respondents makes a prayer for withdrawal of the review petition pending before the High Court filed on behalf of respondent Nos.11-13 vide Review Petition No.2/2022. In the circumstances, review petition pending before the High Court stands dismissed as withdraw.

In view of aforesaid facts and circumstances of the case, we remit the matter back to the learned Single Judge of the High Court to be adjudicated on its own merits.

Any change or alteration in the status quo as it exists today in respect of the property in dispute, shall abide by the final out-come and any change interregnum made by any party shall be at their own risk and cost.

Accordingly, this Special Leave Petition is disposed of with a request to the learned Single Judge to proceed and decide the dispute between the parties expeditiously preferably within a period of four months from today.”

Thereafter, the writ petition was heard by the learned Single Judge resulting in the impugned order dated August 14, 2023.

As noted above, the learned Single Judge held that, the writ petitioner/appellant was challenging actions of the SJDA (Siliguri Jalpaiguri Development Authority) and that, since the writ petitioner/appellant was enjoying the benefits of the illegality claim to be perpetuated by SJDA, the writ petitioner/appellant was not entitled to maintain the writ petition.

With respect, we are unable to accept the view of the learned Single Judge that, a person, who received benefits of an illegality cannot approach the writ court to bring forth the legality committed by a statutory authority. We hasten to add that we are not returning a finding that the writ petitioner/appellant received any benefit of any illegality.

The issue of locus standi of the writ petitioner/appellant stood decided by the Division Bench on March 11, 2022 and the same attained finality between the parties.

The issues raised by the parties, save and except the issue of locus, as noted by the Hon'ble Supreme Court, are required to be decided by the learned Single Judge.

We set aside the impugned order dated August 16, 2023 and remand the writ petition along with all connected applications therein for hearing on merits, in terms of the order dated February 13, 2023 passed by the Hon'ble Supreme Court.

Liberty to the parties to mention before the learned Single Judge for early hearing.

MAT 133 of 2023 along with connected application are disposed of.

Since we do not invite the parties to file affidavits, allegations made in the application for stay being IA NO.CAN/1/2023 are deemed not to be admitted.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)