

08 22.04.2024
rkd Ct.15

W.P.A. 11986 of 2018
(IA NO: CAN 2/2023)

Siraj Khan
-vs-
The State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharyya,
Mr. Uday Sankar Chattopadhyay,
Mr. Suman Sankar Chatterjee,
Ms. Snigdha Saha,
Mr. Pronay Basak,
Mr. Subhayu Das,
Ms. Trisha Rakshit,
Ms. Aishwarya Datta

....for the petitioner.

Mr. Amit Kumar Nagn
Mr. Partha Banerjee

....for the respondent nos.2 to 4.

Mr. S. M. Hassan,
Ms. Anupama Yasmin

....for the Haldia Municipality.

The writ petition has been filed, *inter alia*,
challenging tender notice dated 5th February, 2016
issued by the Haldia Development Authority
(hereinafter referred to as “HDA”) in connection
with a land and water body measuring 9.68 acres
and prayer was made to issue writ of mandamus in
order to permit the petitioner to continue the
developmental and beautification work at the land
in question having water body named Subhas
Sarobar.

Mr. Bhattacharya, learned senior advocate

submits on behalf of the petitioner that a lease deed was executed on 5th October, 2010 in between Haldia Municipality and the petitioner for a period of thirty years on payment of lease rent at the rate of Rs. 2,25,000/- per year.

It is submitted on behalf of the petitioner that he was prevented from carrying out beautification work at Subhas Sarobar within the time stipulated in the aforesaid lease deed due to intervention of HDA as it emanates from paragraph 4(q) of the affidavit-in-opposition used on behalf of the HDA. Notice of this Court has been drawn to the incidents as narrated in the said paragraph that due to failure to prevent petitioner from carrying out work vide memo dated 4th July, 2012 Officer-in-Charge of the concerned police station was requested to take necessary action to stop construction and police authorities were also requested to take steps against Haldia Municipality.

Main limb of submission as advanced on behalf of the petitioner is acrimony in between HDA and Haldia Municipality and the petitioner was victim of the same. It is also submitted that the petitioner put in lease rent for a period of two years and thereafter since he was prevented from

carrying out work as he was required to perform in terms of the lease agreement, he preferred letters to the concerned authorities of Halida Municipality and HDA on different dates in the year 2012.

From one of such letters dated 9th July, 2012 it appears that the work which was being carried out by the petitioner in the month of June, 2012 was obstructed at the instance of HDA due to intervention of the police authorities based on complaint made by the HDA before the said police authorities. This information as it was supplied to the Haldia Municipality is also echoed from other similar letters issued by the petitioner in the year 2012 which according to the petitioner is the reason for his inability to complete the work within the specified time. Statements made on behalf of the HDA in different paragraphs of affidavit-in-opposition are also placed before this Court in order to point out that there were differences in between HDA and Haldia Municipality which led to a situation where FIR was lodged against the Chairman of the Municipality at the instance of HDA triggering writ petition being WPA 17087 of 2012.

However, it has been submitted that the writ petition preferred by the Chairman of the

Municipality was allowed by a coordinate Bench vide order dated 22nd August, 2012 as a result whereof a letter was issued on 6th September, 2012 on behalf of the Municipality addressed to the petitioner to complete the project work within a period of three months. Prior to that during pendency of the aforesaid writ petition another letter dated 13th August, 2012 was issued on behalf of the Municipality asking the petitioner to stop work due to pendency of the aforesaid writ petition.

Relating to issuance of termination letter dated 5th October, 2012 issued on behalf of the Haldia Municipality whereby petitioner was informed that if the petitioner fails to resume work within certain time the agreement would stand terminated it has been contended by Mr. Bhattacharya, representing the petitioner that the contents of such termination order ought not to be supported since previously vide letter dated 13th August, 2012 the Municipality asked the petitioner not to carry out the work. Therefore, situation goes to show that in the year 2012 contradictory letters were issued by the Municipality in August, September and October since the Municipality and HDA were at loggerheads during such time.

It is submitted on behalf of the petitioner

that though prayer has been couched against tender notice dated 5th February, 2016 in this writ petition but the prayer (c) should be construed in a way based on which legality and validity of the termination letter dated 5th October, 2012 can be examined; since in prayer (c) writ of mandamus has been prayed for to allow the petitioner to continue and complete work which the petitioner is required to perform in terms of the lease agreement.

The learned advocate representing the Municipality has placed reliance on the relevant part of the lease agreement dated 5th October, 2010 wherein it has specifically been stipulated that the petitioner being licensee needs to complete entire beautification work and other allied work within two years from the date of execution of the lease agreement.

It has been submitted that the yearly lease rent of Rs.2,25,000/- was paid by the petitioner for first two years from the date of execution of lease agreement but subsequently till date no lease rent has been paid. Maintainability of this writ petition has also been questioned jointly by the learned advocates representing the Municipality and HDA on the ground that in the writ petition challenge has been thrown to the tender notice dated 5th

February, 2016 in order to prevent the concerned respondent authority from issuing tender/work order in favour of other parties pertaining to aforesaid land and water body but the termination of lease which has been made by the Municipality vide letter dated 5th October, 2012 has not been assailed in this writ petition.

Additionally, a point has been taken on behalf of the HDA that till the year 2004 Municipality was authorised to execute lease in favour of the petitioner in view of the lease agreement which was executed by and between HDA and Haldia Municipality. However, the lease agreement dated 5th October, 2010 was executed by the concerned authority of Municipality which according to the HDA is not permissible since in the year 2010 it was not within domain of the Municipality to take such steps in connection with the water body and the land in question.

Having considered the submissions made on behalf of the parties and on perusal of the relevant materials available on record, this Court needs to consider the steps taken by the petitioner for granting relief in the present writ petition as prayed for. The petitioner entered into an agreement with the Municipality on 5th October,

2010 with the condition that he would complete the specified work at the land and water body in question within a period of two years and there was also an agreement to the extent that the said lease would have life for a period of thirty years on payment of yearly lease rent of Rs.2,25,000/-. The petitioner in his turn paid yearly lease rent for a period of two years and thereafter stopped paying such lease rent and also could not complete the work which was required to be finished within a period of two years. In support of failure of the petitioner to complete the work within the specified time of two years it has been submitted by the learned advocate representing the petitioner that due to the situation which evolved since HDA and the Municipality were at loggerheads and the prevention at the instance of the HDA on making complaint before the police authorities, the work could not be completed within the stipulated time.

However, on perusal of the relevant documents and the letters preferred by the petitioner before the concerned respondent authorities it transpires that all those documents/letters pertain to 2012 onwards. The complaint which was lodged by the HDA before the concerned police authorities was also dated 4th

July, 2012. Question crops up what steps petitioner did take after execution of lease deed on 5th October, 2010 till the beginning of the year 2012. This Court has made an attempt to find out an answer from the pleadings made on behalf of the petitioner but no explanation has been given in order to point out the progress of work made during the said period from October, 2010 till the beginning of 2012.

The contradictory letters issued on behalf of the Municipality cannot be supported while adjudicating this writ petition but at the same time this Court is required to find out the contemporaneous steps taken by the petitioner on receipt of letter of termination dated 5th October, 2012. No legal steps were taken within time on receipt of this letter of termination and after three years present writ petition was instituted questioning the tender notice dated 5th February, 2016.

It is settled principle of law that in appropriate case the defect in the prayer can be cured provided there is appropriate pleadings in the writ petition. This Court does not find any ground or pleadings being made in this writ petition which

are directed against the legality and validity of the termination letter dated 5th October, 2012. This Court is also aware of the fact that after payment of yearly lease rent in 2012 till date nothing has been paid by the petitioner.

In the backdrop of aforesaid facts today if the writ petition is allowed permitting the petitioner to retain the land and water body based on the lease agreement dated 5th October, 2010 it would lead to a situation where without making any timely payment of lease rent for a period of more than ten years petitioner would be permitted to enjoy the land and water body measuring 9.68 acres which cannot be countenanced.

In above conspectus, this Court does not find merit in this writ petition and the same stands dismissed. The interim order stands vacated.

However, considering the predicaments which the petitioner faced in the year 2012 which was after two years from the date of execution of lease agreement due to differences which was persisting in between HDA and Haldia Municipality and taking note of the fact that the petitioner deposited lease rent for two years, this order shall not preclude the petitioner to approach the civil Court for payment of compensation in accordance

with law.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)