

D/L
Item No. 03
02.02.2024
KOLE

**MAT 78 of 2024
With
IA CAN 1 of 2024
With
MAT 77 of 2024
With
IA CAN 1 of 2024**

**Champa Routh
-Vs.-
The State of West Bengal & Ors.**

Mr. Bhagbat Chatterjee,

...for the appellant.

*Mr. Sonal Sinha,
Mr. Suman Sengupta,
Mr. D. Basu Mallick
Mr. Avishek Prasad,*

...for the State.

Mr. Subhasis Bandopadhyay,

...for the Municipality.

*Mr. Mrinal Kanti Ghosh,
Mr. Chandra Nath Sarkar,*

...for the respondent no. 8 and 9.

By consent of the parties the appeals and the connected applications are taken up for hearing together.

A judgment and order dated January 8, 2024, whereby three writ petitions were disposed of by a learned Judge of this Court, is under challenge in these two appeals at the instance of the writ petitioner in two of the three writ petitions.

WPA 6514 of 2023 was filed by Sri Chunilal Bhattachariya (in short 'Chunilal') for implementation of an order of demolition passed by the Burdwan Municipality (in short 'the Municipality') in respect of unauthorized construction raised by Smt. Champa Routh (in short

‘Champa’). WPA 14343 of 2022 was filed by Champa for an order directing the Municipality to consider her application for regularization of the unauthorized construction. WPA 26476 of 2022 was an application filed by Champa alleging unauthorized construction at the instance of Chunilal and for a direction on the Municipality to take appropriate action against such illegal construction. All the three writ petitions were disposed of by the learned Judge by the judgment and order impugned in these two appeals filed by Champa.

Champa and Chunilal are neighbours. We cannot say they are friendly neighbours. On a complaint lodged by Chunilal, proceedings were held by the Municipality and an order for demolition of unauthorized construction made by Champa was passed on April 29, 2022. It appears that Champa has constructed an unauthorized floor measuring about 1600 sq. ft.

The learned Judge first took up the writ petition filed by Champa praying for consideration of her representation seeking regularization of the unauthorized construction made by her. That writ petition being WPA 14343 of 2022 was dismissed by the learned Judge holding that there is no provision in law which permits regularization of an unauthorized construction.

In so far as Champa’s other writ application is concerned being WPA 26467 of 2022, the learned Judge dismissed that application holding that the same was a counter blast on the part of Champa made out of vengeance since Chunilal’s complaint had culminated in an order for

demolition of the unauthorized construction made by Champa.

Chunilal's writ petition being WPA 6514 of 2023 was disposed of by directing the Municipality to implement the demolition order dated April 29, 2022. The learned Judge disposed of the writ petitions with the following observations and directions:-

“As the time period framed by the municipality directing Champa to demolish the unauthorized construction expired long back, accordingly, the municipality shall take steps for demolition of the unauthorized construction in accordance with law at the earliest but positively within a period of four weeks from the date of communication of this order. The costs of demolition shall be recovered from Champa as public demand.

The notice issued by the Burdwan Municipality to Chunilal for re-inspection of the property is liable to be set aside as there is specific observation of the municipality that Champa is guilty of raising unauthorized construction and not Chunilal.”

Being aggrieved, Champa has come up before us by way of these appeals.

We have heard learned Advocates for the parties at length. Champa's basic grievance appears to be that when Chunilal had made complaint against Champa, the Municipality acted immediately by issuing stop work notice and thereafter, by initiating proceedings which culminated in the demolition order. However, when Champa made a complaint against Chunilal, the Municipality remained idle.

The fact remains that Champa had filed an earlier writ petition being WPA 12639 of 2022, alleging unauthorized construction at the instance of Chunilal. It was also alleged by Champa that Chunilal had made the impugned construction without obtaining conversion of the classification of the land from 'danga' to 'bastu'. It was submitted on behalf of the Municipality that there was a sanctioned plan in favour of Chunilal and there was no unauthorized construction. A document was also produced before the learned Judge showing conversion of the relevant land of Chunilal from 'danga' to 'bastu' in the year 2012. The learned Judge dismissed the writ petition by an order dated November 15, 2022, holding that there was no substance in the allegations made by Champa.

Champa did not challenge the aforesaid judgment and order before any competent forum. That judgment and order has attained finality. The issue of unauthorized construction at the instance of Chunilal, as between Champa and Chunilal is *res judicata*. So is the issue of conversion of land by Chunilal.

Therefore, we do not find any infirmity in the judgment and order sought to be assailed in these two appeals.

However, we do find that immediately after Champa's earlier writ petition was dismissed by the judgment and order dated November 15, 2022, she made a representation dated November 17, 2022, to the Municipality alleging firstly, that although the sanctioned building plan in favour

of Chunilal permitted him to construct a G+1 storeyed building, he has in fact constructed a G+2 storeyed building. The further grievance ventilated in the representation was that Chunilal has not kept sufficient side space between his building and Champa's building. Learned Advocate for Champa says that the representation should be considered by the Municipality.

Learned Advocate for Chunilal draws our attention to a representation dated November 22, 2021, made by Chunilal to the Chairman of the Board of Administrators of the Municipality which is almost identical with the representation dated November 17, 2022. The same two issues of an extra floor and insufficient side space were complained of in the earlier representation dated November 22, 2021. Therefore, it is not that these issues were raised for the first time after the learned Single Judge dismissed Champa's earlier writ petition by judgment and order dated November 15, 2022. Hence, we are not inclined to direct the Municipality to reopen the matter again.

In view of the aforesaid, we are not inclined to interfere with the judgment and order impugned in these two appeals excepting that taking a lenient view of the matter, we set aside the direction for payment of costs.

The learned Judge had directed implementation of the demolition order dated April 29, 2022, within four weeks. Time for the Municipality to execute the demolition order stand extended by four weeks from date.

Since we have not called for affidavits, the allegations made in the stay application, are deemed not to be admitted by the respondents.

The appeal and the connected application are disposed of accordingly.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Supratim Bhattacharya, J.)