

22.02.2024
Item No.1.
Court No.6.
AB

**M.A.T. 244 of 2024
With
CAN 1 of 2024**

**Mithu Barman Das & Anr.
Vs
The State of West Bengal & Others**

Mr. Dilip Kumar Sinhafor the Appellants.

Mr. Amal Kumar Sen, ld. AGP,
Ms. Sahina Sumifor the State.

Mr. Soumen Kr. Dutta,
Mr. Partha Sarathi Basu,
Sk. Sayanuddinfor the Respondent No.8/
Writ Petitioner.

A judgment and order dated January 3, 2024, whereby the writ petition of the respondent no.8 herein, being WPA 27503 of 2023, was disposed of by a learned Judge of this Court, is under challenge in this appeal, at the instance of the respondent nos.8 and 9 in the writ petition.

There were earlier rounds of litigation between the appellants herein and the writ petitioner. We need not advert to the records of such litigation for the present purpose.

The short dispute is that the appellants herein claim that the writ petitioner has put up a 'pucca' boundary wall without obtaining sanction from the concerned Panchayet. After a few rounds of litigation, pursuant to this Court's order, the concerned Sub Divisional Officer (in short "SDO") passed an order

dated September 14, 2023, the relevant portion whereof reads as follows:

“It clearly appears from the report of BDO, Sutahata which was duly forwarded by him vide memo no.1524, dated 28.07.2023 that the petitioner constructed the boundary wall in question with bricks and cement and is being used for commercial purposes.

Hence on being satisfied I do hereby direct the petitioner to demolish the boundary walls in question within 02(two) months from the receipt of this order failing which the Pradhan, Chaitanyapur Gram Panchayat is directed to demolish the unauthorized boundary wall in question with necessary help from the Block Development Officer, Sutahata Dev. Block, the Officer-in-Charge, Sutahata Police Station and the Assistant Engineer, PWD (Roads) logistic support and OC Fire Brigade if required. The Station Manager, WBSEDCL, Chaitanyapur Group Supply is directed to disconnect the Electric Line during the time of removal if required. Cost of demolition will be recovered from the petitioner as public demand.”

Challenging the said order, the respondent no.8 in this appeal approached the learned Single Judge in the present round of litigation.

It was submitted by the writ petitioner before the learned Judge that the concerned Block Development Officer (in short “BDO”) before submitting his report to the SDO conducted an inspection of the construction in question without notice to the writ petitioner. This amounted to breach of the principles of natural justice. Therefore, the report of the BDO could not have been relied upon by the SDO in passing the order for demolition of the concerned boundary wall.

Learned Single Judge accepted such submission and set aside the inspection report of the BDO as also

the order of the SDO directing demolition of the impugned construction. The learned Judge directed fresh inspection to be held upon notice to both the parties and circulation of such inspection report amongst the parties. The SDO, Haldia was directed to afford an opportunity of hearing to all the necessary parties prior to passing the final order. The learned Judge, therefore, disposed of the writ application with the following further observations:

“It is made clear that the inspection report and the order passed relying upon the said inspection report is set aside only because there is no proof to show that the said inspection was conducted upon prior intimation to the parties. The Court not being satisfied that principle of natural justice was complied with at the time of inspection has set aside the inspection report and the order passed consequent thereto.

The issue will be decided only from the stage of the inspection by the Block Development Officer, Sutahata Development Block as per the instruction of the Sub Divisional Officer, Haldia. Steps taken prior to passing direction for conducting inspection, is not interfered with by the Court.

The proceeding by the Sub Divisional Officer is not required to be started de novo. The same will start only from the stage of causing the physical inspection.

The Sub Divisional Officer, Haldia shall endeavour to conclude the proceeding at the earliest, but positively within a period of twelve weeks from the date of inspection.”

Being aggrieved, the private respondents in the writ petition have come up by way of this appeal.

Mr. Sinha, learned Advocate representing the appellants says that there was no need for the SDO to rely upon the report of the BDO. There is no such

requirement in law. The learned Judge should have held that the report of the BDO is irrelevant. Therefore, whether or not such report was prepared upon notice to the writ petitioner, is of no consequence. The writ petitioner has been successful in resisting demolition of the impugned construction for a very long time by filing one writ petition after the other. He has no sanction for the impugned construction, which is a 'pucca' construction as would appear from the relevant documents on record and not a 'kachha' construction as contended by the writ petitioner. Hence, learned Advocate prays for reversal of the order of the learned Single Judge.

Mr. Dutta, learned Advocate appearing for the writ petitioner essentially made the same submission that he had made before the learned Single Judge which we have recorded above.

Having considered the rival contentions of the parties, we are of the view that there is no apparent error in the order of the learned Single Judge. It would appear from the order of the concerned SDO that he relied on the report of the BDO in coming to the conclusion that the impugned construction is 'pucca' in nature and, therefore, could not have been put up without prior sanction from the Competent Authority. Therefore, the learned Judge was correct in setting aside the said report and the order of the SDO since the report of the BDO was based on a local inspection

held without notice to the writ petitioner. We agree with the learned Judge that principles of natural justice were flouted in the present case.

Mr. Sen, learned Additional Govt. Pleader appearing for the State has handed up copy of a notice of inspection dated February 1, 2024, issued by the concerned BDO informing the parties that a joint field enquiry will be held on February 5, 2024. We are told that such inspection has been held and the parties including the appellants herein participated in such inspection. Therefore, the appellants have acted in terms of the order impugned. Having accepted the order, the appellants cannot be permitted to challenge the order of the learned Single Judge.

We do not find any merit in this appeal, which is, accordingly, dismissed along with the connected application, without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)