

07. 18.01.2024
Court No.6
(Tanmoy)

FMA 260 of 2023

Raju Manna
-Versus-
Smt. Sunanda Manna & Ors.

With
IA No: CAN/1/2023

Mr. Satyajit Mondal, Adv.,
Mr. Amarnath Sen, Adv.,
Ms. Subhangi Panigrahi, Adv.,
Mr. Amit Bikram Mahata, Adv.

...for the appellant.

Mr. Mrinal Kanti Ghosh, Adv.

...for the respondent nos.1&2/
writ petitioners.

Mr. Shyama Prasad Purkait, Adv.,
Ms. Moumita Mondal, Adv.

...for the Diamond Harbour
Municipality.

With consent of the appearing parties, the appeal and the connected application are taken up together for hearing.

A judgment and order dated December 21, 2022, passed by a learned Judge in a writ application of the respondent nos. 1 and 2 herein, being WPA 21722 of 2022, is the subject-matter of challenge in this appeal.

The writ petitioners approached the learned Single Judge alleging illegal and unauthorized construction over a water body at the behest of the private respondents in the writ petition. The appellant herein was the respondent no.6 in the writ petition.

The learned Judge noticed from the relevant records that earlier the writ petitioners had started construction on the same water body after filling up portion of the same and Diamond Harbour Municipality had issued notice to the writ petitioners to stop construction. Such unauthorized construction is yet to be demolished.

The writ petitioners submitted that their objection in respect of the construction being raised by the private respondents in the writ petition is pending consideration before the Municipality.

On behalf of the private respondents in the writ petition, one of whom is the appellant herein, it was submitted before the learned Judge that the construction had been made under the House for All Scheme (Pradhan Mantri Awas Yojana), for which no permission or sanction is required.

The learned Judge observed that the private respondents had not pointed out any law permitting construction over a water body. The learned Judge also recorded the submission made on behalf of the Municipality that a decision was yet to be taken by the Municipality on the objection filed by the writ petitioners.

The learned Judge disposed of the writ petition with the following observations and directions:-

“As it appears that the Municipality has already issued stop work notice in favour of the petitioners when they made construction over the water body, accordingly, the Municipality is directed to take appropriate steps against any other person responsible for making construction over the selfsame water body.

The Municipality is directed to take steps to deal with such unauthorized construction made over the water body and to ensure that all unauthorized constructions made over the water body are removed/demolished in accordance with law, at the earliest, but positively within a period of four months from the date of communication of this order.”

Being aggrieved, the respondent no.6 in the writ petition has come up by way of this appeal.

The appellant says that he has not made any construction over any water body. It is on the banks of a pond that he has raised a construction under the aforesaid Scheme. There is nothing illegal about such construction.

The submission of the appellant is strongly denied and disputed by learned Advocate appearing for the respondents/writ petitioners.

We need not enter into the disputes between the parties. We have already noted that a representation/objection made by the respondents/writ petitioners in respect of the alleged illegal construction made by the private respondents in the writ petition is pending consideration at the end of the Municipality. The Municipality is directed to dispose of such objection/representation by a reasoned order, in accordance with law and the applicable Rules and Regulations, within a period of eight weeks from the date of communication of this order by the writ petitioners to the Board of Councillors of the Municipality, after giving opportunity of hearing to all concerned parties including the parties to the writ petition. A copy of the objection/representation be sent to the Board

of Councillors along with a copy of this order. The decision taken by the Board of Councillors shall be intimated to the parties within a week from the date of the decision. If the Board of Councillors of the Municipality finds that any illegal construction has been made by the appellant herein or the private respondents in the writ petition, the Municipality shall deal with the same in accordance with law.

As regards the illegal construction that was raised by the writ petitioners, learned Advocate for them, on instruction, says that the writ petitioners and the private respondents in the writ petition stand on the same footing. They have no objection if the unauthorized construction raised by the private respondents in the writ petition and the writ petitioners are both removed by the Municipality.

Learned Advocate for the appellant denies and disputes that the private respondents in the writ petition and the writ petitioners stand on the same footing. He says that the writ petitioners have filled up a part of the pond and have made construction thereon.

We are not inclined to go into such disputes between the parties. The Municipality will take appropriate action as has been directed by the learned Single Judge as also by us in this order.

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

The appeal being FMA 260 of 2023 and the connected application being IA No: CAN/1/2023 are disposed of.

Urgent photostat certified copy of this order, if applied for, be made available to the parties, upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)