

10-04-2024
Item No.6
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA No.9212 of 2024
Durgapur Ex-Servicemen's Co-operative Housing Society
Limited & Anr.
-vs-
The State of West Bengal & Ors.

Mr. Anindya Lahiri
Mr. Arkadipta Sengupta
Mr. Pradyat Saha ...for the petitioners

Mr. Joydip Banerjee
Mr. Sanjay Mukherjee ...for the State

Mr. Sandipan Banerjee ...for the Corporation

Mr. Sharanya Chatterjee
Mr. A. Ghosh ...for ADDA

Mr. Binoy Majumder ...respondent no.6
(appearing in-person)

The petitioners challenge the order of the Commissioner of Durgapur Municipal Corporation dated January 18, 2024 communicated to the parties vide order sheet dated March 21, 2024. In furtherance to the aforesaid order passed by the Commissioner, a further communication dated March 21, 2024 was issued to the petitioner no.2, the Secretary, Durgapur Ex-servicemen's Cooperative Housing Society Limited.

The Commissioner, Durgapur Municipal Corporation has come to a conclusive finding that the construction of the single storied warehouse/store room/garage were made without having adequate mandatory open space as per the West Bengal Municipal Building Rules, 2007 (Amended) clause 50(2).

It has been mentioned that there is no legal provision for approval of Master Plan for each and every lessee or its amendment by the State Government.

The Asansol-Durgapur Development Authority (ADDA) in its order-sheet dated November 21, 2023 mentioned that there would be no revision of the Master Plan in the present context.

Demolition notices were issued in the year 2022 for demolition of the single storied warehouse/store rooms/garages. The demolition of the demarcated unauthorised constructions will be made by the Durgapur Municipal Corporation on April 16, 2024 from 11.30 a.m. onwards.

It has been submitted that the court vide order dated September 20, 2023 passed in WPA No.28017 of 2022 (Binoy Majumder v. The State of West Bengal & Ors.) directed the Durgapur Municipal Corporation and ADDA to jointly act in accordance with the directions passed by the department, but the order of demolition has been passed unilaterally by the Durgapur Municipal Corporation without consultation with ADDA.

It has further been submitted that the Secretary does not have the authority to remove all persons from the alleged unauthorised constructions as restraint order has been passed by the civil court in this regard.

Prayer has been made for remanding the matter to the Corporation for fresh reconsideration after setting aside the order of demolition passed by the Corporation.

Learned advocate representing ADDA has relied upon the order dated November 21, 2023 which was

passed upon hearing the submission made on behalf of all the parties. The Chief Executive Officer of ADDA made it absolutely clear that there is no legal provision for post facto approval of construction already raised. The prayer made for approval of the post facto approval of the constructions was held to be not tenable and accordingly ADDA decided the issue and concluded the hearing.

Relying upon the order passed by ADDA, Durgapur Municipal Corporation decided the issue of unauthorized construction after hearing all the parties. The order of demolition was duly communicated and steps were taken for demolition of the unauthorised constructions.

At the time of demarcation there was huge commotion and brawl at the instance of the petitioners. The Corporation video recorded the entire incident and the recording has been produced before this court in a pen drive. The pen drive was handed over to the learned advocate representing the petitioners for viewing the same. The Corporation has lodged FIR before the police station.

It has been submitted that steps were being taken by the Corporation in compliance of the direction passed by the court. Prayer has been made for dismissal of the writ petition.

Upon hearing the submission made on behalf of all the parties, it appears that, admittedly, there is no provision in law for regularizing the constructions already made or to grant post facto approval of the constructions made.

There is already a Master Plan according to which the constructions were raised. No further addition, alteration could have been made in the said place without approval or sanction from the competent authority. In fact, there is hardly any scope for revision of the Master Plan.

According to the provisions of the West Bengal Municipal (Building) Rules, 2007, as amended, the mandatory side open spaces are required to be maintained at the time of raising construction. The construction could not have been made without permission.

Submission has been made by the petitioner that the subject constructions could not be treated as unauthorised ones. It has been submitted that the garages do not have pucca roof and, accordingly, they cannot be said to be unauthorized constructions. The Municipal Corporation asserts that the roof of the structures is pucca in nature.

According to the West Bengal Municipal Corporation Act, 2006, 'building' means a structure constructed for whatsoever purpose or of whatsoever materials, and includes the foundation, plinth, wall, floor, roof, chimney, fixed platform, verandah, balcony, cornice, projection or part of a building and anything affixed thereto and any wall (other than boundary wall) enclosing or intended to enclose any land singed or outdoor display structure.

In the instant case, the garages/warehouse/store rooms have been constructed. It hardly matters whether there is a pucca roof over the said construction. In the absence of any legal provision relying upon which the

post facto approval can be sanctioned, the court does not find any error with the order passed by the Commissioner of the Corporation.

The petitioners rely upon the notification published in the Kolkata Gazette Extraordinary dated July 28, 2023 which is an amendment to the West Bengal Municipal (Building) Rules, 2007 permitting the Board of Councillors of the municipality to regularize minor unauthorised construction or execution of minor work. The aforesaid notification has been published in connection with the West Bengal Municipal Act, 1993. The amendments made therein have not been made applicable in respect of the West Bengal Municipal Corporation Act, 2006 and, as such, the notification relied upon by the petitioners cannot be made applicable in the facts and circumstances of the instant case.

It has been brought to the knowledge of the court that a contempt application for implementation of the order passed by this court is pending consideration and that the contempt application is returnable on April 18, 2024. The demolition is required to be conducted prior thereto. The court is not inclined to exercise jurisdiction in the instant writ petition.

The writ petition thus fails and is hereby dismissed.

The Commissioner, Asansol-Durgapur Police Commissionerate and the New Town police station are directed to render adequate police protection to the men and agents of the Durgapur Municipal Corporation at the time of implementation of the order of demolition, if sought for.

Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J]