

11. 29.04.2024
Court No.6
(Tanmoy)

MAT/782/2024

**DURGAPUR EX-SERVICEMEN'S CO- OPERATIVE
HOUSING SOCIETY LIMITED & ANR.
VS
THE STATE OF WEST BENGAL AND ORS.
WITH
IA NO: CAN/1/2024**

Mr. Md. Sarwar Jahan, Adv.,
Ms. Tapati Sarkar, Adv.

...for the appellants/
writ petitioners.

Mr. Joydip Banerjee, Adv.,
Mr. Sanjoy Mukherjee, Adv.

...for the State.

Mr. Sandipan Banerjee, Adv.,
Mr. Arijeet Bhattacharjee, Adv.

...for the Durgapur
Municipal Corporation.

Mr. Sharanya Chatterjee, Adv.

...for the respondent nos. 2&3/
Asansol-Durgapur
Development Authority.

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

A judgment and order dated April 10, 2024, whereby the writ petition of the appellants herein being WPA 9212 of 2024, was dismissed by a learned Judge of this Court, is the subject-matter of challenge in this appeal filed by the writ petitioners.

The appellants approached the learned Single Judge challenging a demolition order issued by the Commissioner of Durgapur Municipal Corporation (in short, 'DMC') on January 18, 2024 and communicated to the concerned parties *vide* order sheet dated March 21, 2024. The Commissioner of DMC has come to a

finding that the single storeyed warehouse/store rooms/garages constructed by the appellants/writ petitioners are not backed up by any sanctioned plan.

It appears that earlier the private respondent herein had approached the Writ Court by filing WPA No. 28017 of 2022 (*Binoy Majumder v. The State of West Bengal & Ors.*), complaining of unauthorized construction by the appellants herein. An order dated September 20, 2023, was passed by the learned Single Judge directing DMC and Asansol-Durgapur Development Authority (in short, 'ADDA') to act jointly in the matter of considering the allegations of unauthorized construction made against the appellants herein.

It appears that an application had been made by the appellants herein before ADDA for amendment of the relevant Master Plan and to regularize the impugned construction raised by the appellants. By an order dated November 21, 2023, ADDA held that there was no legal provision for amendment of the Master Plan. There was also no provision for *post facto* approval of a construction raised without obtaining sanctioned plan. That order of ADDA has not been challenged by the appellants.

Taking into consideration the aforesaid order of ADDA, DMC decided the issue of unauthorized construction after hearing all the concerned parties including the appellants herein and issued the order of

demolition. Challenging the order of demolition the appellants approached the learned Single Judge in the present round of litigation.

The learned Single Judge opined that there is hardly any scope for revision of the relevant Master Plan. The learned Judge also noted that at the time of attempted demarcation of the unauthorized construction by DMC people, there was huge brawl created by the members of the appellant Society. DMC has lodged an FIR.

The writ petitioners sought to rely upon the notification published in the Kolkata Gazette Extraordinary dated July 28, 2023, amending the West Bengal Municipal (Building) Rules, 2007, permitting the Board of Councillors of the Municipalities to regularize minor unauthorized construction or execution of minor works. The learned Judge observed that the aforesaid notification has been published in connection with the West Bengal Municipal Act, 1993, and the amendment has not been made applicable in respect of the West Bengal Municipal Corporation Act, 2006. As such, the notification relied upon by the writ petitioners cannot be made applicable in the facts and circumstances of the instant case. The learned Judge dismissed the writ petition.

Mr. Jahan, learned Advocate appearing for the appellants/writ petitioners, says that no Building Rules

have been framed under the West Bengal Municipal Corporation Act, 2006. The Corporations governed by the 2006 Act had adopted the Building Rules of 2007, framed under the 1993 Act. Therefore, by reason of the amendment to the Building Rules of 2007, DMC has been authorized to regularize minor deviations from a sanctioned plan. Learned Advocate says that this aspect of the matter was not considered by DMC while issuing the demolition order. DMC should be directed to consider this aspect and file a report before this Court.

Learned Advocate for DMC says that there is no scope for regularizing the impugned construction which is the subject-matter of the present case. The construction cannot be said to be minor. It is not backed by any plan at all. The relevant Building Rules have been substantially flouted.

Learned Advocate for ADDA says that he has already submitted before the learned Single Judge that there is no scope for amendment of the relevant Master Plan. ADDA has made its stand clear in the order dated November 21, 2023.

We have considered the rival contentions of the parties. We are of the view that the learned Single Judge has not committed any error in passing the order impugned. Reckless people, who raise constructions without obtaining prior permission from the Competent Authority, deserve no indulgence from Court and in

particular, a Court of equity, which the Writ Court is. It is not in dispute that the impugned constructions in the present case are not supported by any sanctioned plan. No sympathy should be shown to people who indulge in such illegal activities.

The issue, as to whether or not the amendment made to the Building Rules of 2007 by the notification dated July 28, 2023, applies to Corporations governed by the 2006 Act, is left open.

We see no reason to interfere with the order under appeal. No unauthorized construction should be allowed to stand.

The Deputy Commissioner of Police, Asansol-Durgapur Police Commissionerate is directed to render all assistance and co-operation to ADDA and DMC, in the matter of implementation of the concerned demolition order.

The appeal being MAT/782/2024 and the connected application being IA No: CAN/1/2024, therefore fail and are dismissed. There will be no order as to costs.

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.)

(Prasenjit Biswas, J.)