

22.02.2024
Item No.14
Court No.6.
S. De

**F.M.A. 759 of 2023
With
I.A. No. CAN/1/2024**

**Mir Abdul Rasid & Anr.
Vs
The State of West Bengal & Ors.**

Mr. Amit Baran Dash,
Ms. Ankana Sarkar, ...for the appellants.

Mr. Biswarup Biswas,
Mr. Pradip Kr. Ghosh,
...for the private respondents.
Mr. Rajarshi Basu,
Mr. S.T. Mina, ...for the State.

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

A judgment and order dated April 17, 2023, passed by a learned Judge of this Court, dismissing the appellants' writ petition being WPA 5529 of 2023, is under challenge in this appeal at the instance of the writ petitioners.

The writ petitioners approached the learned Single Judge complaining that their representation to the Contai Municipality pointing out illegal construction at the instance of the private respondents was not receiving the attention of the Municipality.

It was submitted on behalf of the private respondents that the present writ petition is a counter-

blast. The private respondents have made a complaint against the writ petitioners alleging unauthorized construction. They have also filed a writ petition in that regard. Being irked by the Municipality taking action on the basis of the complaint of the private respondents, the writ petitioners have made a false complaint to the Municipality and has thereafter filed the present writ petition just to harass the private respondents. They say that they have made the concerned construction strictly in accordance with the building plan sanctioned by the Contai Municipality. The learned Judge recorded the submission made on behalf of the Municipality that the representation of the writ petitioners will be taken up for consideration.

The learned Judge however observed that in the writ petition and in the objection filed by the writ petitioners before the Municipality, there is no mention as to when the concerned construction was made by the private respondents. Such respondents assert that construction was made in the year 2018. The learned Judge dismissed the writ petition with the following observations :

“It appears that the private respondents did not raise any objection at the time of raising the construction and even after five years of making the construction. Only after the private

respondents lodged complaint against the petitioners alleging unauthorized construction, the petitioners as a counter-blast filed objection before the Municipality alleging unauthorized construction at the instance of the private respondents.

It appears that the instant writ petition has been filed after the Municipality took steps against the petitioners in response to the complaint lodged by the private respondents. The writ petition appears to be filed with mala fide interest to take revenge against the petitioners. The same cannot be allowed by the Court.”

Being aggrieved, the writ petitioners have come up by way of this appeal.

We have heard learned counsel for the parties. We see no harm if the Municipality considers the representation of the appellants/writ petitioners. The private respondents will be at liberty to demonstrate before the Municipality that there is no iota of truth in the representation made by the appellants. The private respondents will be free to rely on all necessary documents including the sanctioned plan at the hearing to be granted by the Municipality.

Learned advocate for the private respondents sought to rely on a judgment dated February 9, 2024, passed by this Bench in ***FMA 200 of 2024 (Kolkata Municipal Corporation & Ors. Vs. Rinku Majhi)***, in support of his submission that the appellants/writ petitioners have approached this Court in the present case after inordinate and unexplained delay and on that ground alone, the writ petitions deserve to be dismissed.

We have considered the said judgment. The facts of that case were entirely different. We are of the opinion that the principles of law indicated in that judgment in no manner assist the private respondents in the present case.

Accordingly, we direct the Board of Councillors of Contai Municipality being the respondent no.5 herein, to dispose of the representation of the appellants/writ petitioners dated February 16, 2023, by passing a reasoned order, in accordance with law and the applicable rules and regulations, within a period of ten weeks from the date of communication of this order along with a copy of the representation made by the appellants to the Chairman of the Board of Councillors, after granting due opportunity of hearing to the appellants as well as the private respondents or their authorized representatives. The parties will be at liberty to file such documents before

the Board of Councillors and make such submission as they may be advised. The Board of Councillors may take further action depending on the order that it passes on the representation of the appellants.

We clarify that we have not gone into the merits of the disputes between the parties or into the question as to whether or not the private respondents have made unauthorized construction. The Board of Councillors of the Municipality shall take an informed decision in that regard, in accordance with law.

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

FMA 759 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2024.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(M.V. Muralidaran, J.)