

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Shampa Dutt (Paul)

***M. A. T. 953 of 2024
(CAN 1 of 2024)***

***Rasu Santra
-Vs-
The State of West Bengal & Ors.***

For the Appellant : Mr. Animesh Paul, Adv.
Ms. Bishruti Chattopadhyay, Adv.

For the Respondent : Mr. Tanmoy Mukherjee, Adv.
No.5 Mr. Souvik Das, Adv.
Mr. Rudranil Das, Adv.
Mr. Soumava Santra, Adv.

For the Howrah Zilla : Ms. Mekhla Sinha, Adv.
Parishad

For the State : Mr. Lalit Mohan Mahata, Id. A.G.P.
Mr. Rudranil De, Adv.

Heard on : 16.08.2024

Judgment on : 16.08.2024

Joymalya Bagchi, J. :-

1. Appellant is aggrieved by judgment and order dated 23.04.2024 wherein the Hon'ble Single Judge declined to interfere with the order dated 04.12.2023 passed by the District Engineer, Howrah Zilla Parishad.

2. Factual matrix giving rise to the appeal is as follows :-

Appellant is a joint owner of the property. A partition suit is pending between the appellant and other co-owners. Appellant complained before the Howrah Zilla Parishad that unauthorised construction was made on the joint property. The matter was enquired into by the Howrah Zilla Parishad. A Chartered Engineer inspected the building and submitted his report. Considering the report of the Chartered Engineer and other materials on record, Howrah Zilla Parishad was of the opinion that the tile shed building which is alleged to be unauthorised is very old and no sanction was required from the Zilla Parishad authorities.

3. Complaining that the report of the Chartered Engineer had not been supplied to him, appellant approached this court in WPA 6772 of 2023 and a Hon'ble Single Judge directed the District Engineer, Howrah Zilla Parishad to rehear the matter after handing over a copy of the report to the appellant.

4. In terms of the order, a copy of the report was handed over to the appellant. He submitted objection to the report. After giving opportunity of hearing to him, District Engineer, Howrah Zilla Parishad held the

Chartered Engineer's report was correct, genuine and scientific and refused re-inspection of the premises. Being aggrieved by the order of the District Engineer, appellant again approached the Hon'ble Single Judge in WPA 1447 of 2024 who by the impugned order dismissed the writ petition.

5. Learned Advocate for the appellant contends the order passed by the District Engineer is a non-speaking one. No reason is given why the report of the Chartered Engineer is correct. He strenuously argues there are two new rooms in addition to two old rooms on the plot which had not been inspected.

6. We have considered the submissions of the appellant. We have also examined the report of the Chartered Engineer.

7. Chartered Engineer's report describes the existing structure on the site as follows:-

"That there is a existing tile shed building in the aforesaid premises.

That the land level is more or less 250mm down from the metal road top.

That the roof of the building is covered with tiles which is supported over bamboo framework."

8. From the said description it appears a tile shed building was standing on the property. Chartered Engineer examined the property and found that the mortars between the bricks were old and the cracks in the building also lead to the inference the building is an old one. Accordingly, he opined as follows :-

"I hereby certify that after going through a detailed visual inspection that the existing tile shed structure is an old one and of an age of roughly >20 years. I have also asked local residents who have also agreed with me that the inhabitants are living in that building for last 20 years minimum. No way the building is a new one."

9. The aforesaid report was supplied to the appellant. In his objection, he had not disputed the conclusions of the Chartered Engineer. He merely states there are two more rooms in the structure and the District Engineer had not inspected them.

10. From the report of the Chartered Engineer it is clear he had inspected the entire structure and had come to his conclusions. Under such circumstances, prayer for re-inspection on the specious plea two rooms in the structure were not inspected appears to be an afterthought and does not hold water. District Engineer considered the opinion of the Chartered Engineer in light of the relevant materials on record and concluded the report was a reliable one.

11. We are unable to subscribe to the submission of the appellant there was no application of mind or the order impugned is a non-speaking one.

12. If a quasi-judicial authority records with approval the materials on record including submissions of a party which prompts him to concur with a well reasoned report of an expert, it cannot be said the order is a non-speaking one. Application of the mind of the District Engineer to the materials on record including the contentions of the appellant is evident

from the order impugned wherein he accepted the report of the Chartered Engineer and refused re-inspection.

13. Hence, we find no reason to interfere with the order impugned.

14. Appeal is accordingly, dismissed.

15. In view of dismissal of the appeal, connected application being CAN 1 of 2024 is also disposed of.

16. There shall be no order as to costs.

17. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

[Shampa Dutt (Paul), J.]

(Joymalya Bagchi, J.)

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