

D/L
Item No. 10
29.01.2024
KOLE

**FMA 15 of 2024
With
IA CAN 1 of 2023**

**Madhusudan Paik & Anr.
-Vs.-
The State of West Bengal & Ors.**

Mr. Raj Kumar Sain,

...for the appellants.

*Mr. S. M. Hassan,
Mrs. Anupama Yasmin,*

...for the Municipality.

*Mr. Dyutiman Banerjee,
Mr. Salil Kumar Maiti,*

...for the respondent no. 9.

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

A judgment and order dated June 12, 2023, whereby the writ petition of the respondent no. 9 herein being WPA 28924 of 2022 was disposed of by a learned Judge of this Court, is the subject matter of challenge in this appeal at the instance of the respondent nos. 9 and 10 in the writ petition.

It appears that in an earlier round of litigation, the respondent no. 9 herein approached a learned Single Judge by filing WPA 18759 of 2022 alleging that the private respondents in that writ petition who are the present appellants, were making construction over agricultural land without obtaining necessary permission for conversion of the classification of the land. The further allegation was that unauthorized construction was being made without obtaining requisite sanction.

The learned Single Judge from the documents on record noticed that the Haldia Municipality had issued a notice dated July 19, 2022, directing the private respondents in that writ petition to submit all documents in connection with the impugned construction. It was submitted before the learned Single Judge on behalf of the private respondents in the writ petition that necessary permission has been granted by the Haldia Municipality for making construction of a G+1 storied Building. It was further submitted that reply to the Municipality's notice dated July 19, 2022, had still not been given.

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

“In view of the aforesaid submission, the writ petition is disposed of by directing the private respondents to reply to the notice dated July 19, 2022 along with all documents in support of the construction within October 28, 2022.

On receipt of the documents from the private respondents, Haldia Municipality shall take a decision in the matter after giving an opportunity of hearing to both the parties.

The entire exercise shall be concluded positively within November 25, 2022. A formal reasoned order shall be passed and communicated to the parties.

In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.

The aforesaid respondent shall restrict the consideration of the representation with regard to unauthorized construction only and not enter into or decide any private

dispute of the parties regarding right, title and interest in respect of the aforesaid land.”

Pursuant to the aforesaid order, it appears that the present appellants submitted all necessary documents to the Municipality. Proceedings were started by the Executive Officer of the Municipality. Several hearings were held. An order was passed by the Executive Officer on November 18, 2022, the operative portion whereof reads as follows:-

“Now the DA is asked to seek a report from the BL & LRO concerned as to whether there is any recorded bargadar against the building in question and as to whether the land in question is cultivable or not and following receipt of the report subsequent action will be taken/further proceedings will be drawn up.”

The next hearing was held on November 28, 2022, when the Executive Officer perused the report submitted by the concerned BL & LRO. The Executive Officer passed an order, the operative portion whereof reads as follows:-

“In view of above, it is concluded that the respondents Madhusudan Paik and Anjana Paik have acted illegally and unauthorizedly by not taking conversion of the land and by not taking permission/approval of building plan in raising the additional storey as alleged by the petitioner. Accordingly, the petitioners are directed to take necessary steps to dismantle the additional storey raised by them or deposit fin (to be calculated by the Building Plan Section) so as to regularize the matter.”

In the present round of litigation, the respondent no. 9 herein approached the learned Single Judge challenging the order dated November 18, 2022. There was no prayer with regard to the Municipality's order dated November 28, 2022. On the day, the writ petition was disposed of and the

impugned order was passed, the writ petitioner was not represented before the learned Single Judge. However, the learned Judge found from the documents annexed to the writ petition that an order for demolition had been passed by the Executive Officer of the Haldia Municipality in respect of the additional floor that has been raised by the private respondents in the writ petition. The learned Judge disposed of the writ petition with the following directions:-

“It appears from the documents annexed to the writ petition and upon hearing the submissions made on behalf of the parties that an order has already been passed by the Municipality. The same has not been challenged by the person aggrieved. The Municipality is duty bound to implement the order passed. .

In view of the above, the instant writ petition is disposed of by directing the Haldia Municipality to take steps for implementing the order dated November 18, 2022 passed by the Executive Officer for demolition of the additional floor constructed at the instance of the private respondents in accordance with law at the earliest but positively within a period of four months from the date of communication of a copy of this order.”

Being aggrieved the private respondents in the writ petition have come up by way of this appeal.

Learned Advocate for the appellants says that the order passed by the learned Single Judge is beyond the scope of the writ petition. There as no prayer for implementation of the order dated November 28, 2022. The writ petitioner had challenged the order dated November 18, 2022. But that order was not a demolition order. The demolition order was passed on November 28, 2022 and that too without

serving any notice of the hearing dated November 28, 2022, on the appellants herein. There has been a breach of the principles of natural justice. In any event, the appellants were granted a choice of either removing the unauthorized construction or depositing fine with the concerned department for regularizing the unauthorized construction. The appellants had approached the concerned department for ascertaining as to how much fine the appellants were required to deposit but the department did not respond.

Learned Advocate for the respondent no. 9/writ petitioner says that the prayers in the writ petition have not been happily worded. Prayer (b) of the writ petition would make it clear that in fact the writ petitioner wanted a direction for demolition of the unauthorized structure put up by the present appellants. Prayer (b) of the writ petition reads as follows:-

“(b) To issue and order, direction, and/or writ in the nature of Mandamus directing the respondent authorities to set aside and quash the impugned order under challenge thereby directing the municipal authorities to demolish each and every inch of the entire illegal, unauthorized construction so erected over the agricultural land forthwith within a short mandatory period as per provisions of W.B. Municipal Act 1993.”

Learned Advocate for the Municipality says that as per his instruction, notice of the hearing held on November 28, 2022, was duly served on the appellants herein.

We need not go into the dispute regarding service of the notice of the hearing dated November 28, 2022. If the appellants were aggrieved by the order dated November 28,

2022, they should have challenged the same immediately or at any rate within a reasonable time after the order was passed. However, the appellants tried to take advantage of the order by approaching the concerned department to deposit requisite fine. This would show that the appellants were perfectly happy with the order and were prepared to deposit fine/penalty for regularizing the unauthorized construction, if possible.

Even as on the date of the learned Judge passing the order impugned in this appeal, there was no challenge by the appellants to the order dated November 28, 2022. It was about six months after the impugned order was passed that the appellants appear to have filed a writ petition challenging the order dated November 28, 2022, passed by the Executive Officer of Haldia Municipality. Learned Advocate for the appellants says that till such writ petition being WPA 26319 of 2023 is disposed of, no coercive action should be taken against the impugned construction.

We are not inclined to show any leniency to the appellants. Admittedly, they have raised unauthorized construction. The sanctioned building plan permitted construction of G+1 storied building. The appellants have constructed an additional floor. Citizens who take law into their own hands do not deserve any sympathy from a court of law far less a court of equity, which the Writ Court is.

We have also noted that the appellants, in fact, tried to take advantage of the order passed by the Executive Officer on November 28, 2022. It appears that the

concerned department did not entertain the request of the appellants for quantifying the amount of fine/penalty for regularization of the impugned construction. The department may well have acted wisely as all illegal constructions cannot be regularized. Minor deviations from a sanctioned plan may be allowed to be retained by the competent authority upon payment of fine but it will be very unusual if the competent authority permits a whole extra floor to be retained on whatever terms and conditions.

In view of the aforesaid, we find no infirmity in the order of the learned Single Judge. The learned Judge found the demolition order in the records and in our view, rightly directed implementation of the same.

In view of the above, this appeal fails and is dismissed along with the connected application.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)