

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***M. A. T. 1620 of 2024
(CAN 1 of 2024)***

***Sk. Samsad Hossain Warsi & Anr.
-Vs-
Mahinuddin Khan & Ors.***

For the Appellants : Mr. Raghunath Chakraborty, Adv.
Mr. T. Das, Adv.

For the Respondent : Mr. Tanoy Chakraborty, Adv.
No.1/writ petitioner Mr. Chhandan Dutta, Adv.

For the Municipality : Mr. Gopal Chandra Das, Adv.
[Tamralipta Municipality] Ms. Ananya Das, Adv.

Heard on : 28.08.2024

Judgment on : 28.08.2024

Joymalya Bagchi, J. :-

1. Mr. Raghunath Chakraborty for the appellants contends by the impugned order Hon'ble Single Judge has sought to modify the earlier order during the contempt proceeding.

2. We have gone through the materials on record including the order dated 22.02.2023 in WPA 28623 of 2022. By the said order Hon'ble Single Judge directed respondent-Tamralipta Municipality to consider the representation of respondent no.1/writ petitioner after giving opportunity of hearing to all necessary parties and pass a reasoned order thereon. It was also directed if the construction was found either in violation of the sanctioned plan or devoid of sanction plan, necessary steps shall be taken with regard to such unauthorised construction in accordance with law.

3. We are informed the Municipality did not act in terms of the order dated 22.02.2023 and a contempt proceeding being CPAN 1114 of 2023 was initiated. During pendency of the contempt proceeding, a reasoned order dated 13.06.2024 was placed before the Hon'ble Single Judge. Hon'ble Single Judge perused the reasoned order and opined the Municipality had not considered all issues namely, non-maintenance of statutory open space and utilisation of the property for commercial purposes at all. Accordingly, by the impugned order the Hon'ble Single Judge directed fresh spot inspection upon prior notice to the parties and submission of further compliance report.

4. At this stage, order dated 27.06.2024 has been assailed before us. Mr. Chakrabroty claims by the impugned order the Hon'ble Single Judge has modified the earlier order dated 22.02.2023 which is not permissible in law. He also submits the earlier reasoned order dated 13.06.2024 has not been supplied to his clients but a demolition notice has been served

upon them. Accordingly, his clients have been deprived of their valuable right to assail the validity of the reasoned order in accordance with law.

5. Mr. Gopal Chandra Das for Tamralipta Municipality contends the directions of the Hon'ble Single Judge in the impugned order have already been complied with. Spot inspection has been done and a subsequent reasoned order has already been passed on 20.08.2024. Compliance report shall be filed before the Hon'ble Single Judge by tomorrow.

6. The first issue which falls for consideration is does the impugned order alter the directions in the earlier order dated 22.02.2023 in WPA 28623 of 2022?

7. Learned Advocate for the respondent no.1/writ petitioner rightly contends directions for spot inspection and fresh compliance report are in aid of effective consideration of all issues raised in the representation and does not travel beyond the scope and ambit of the earlier order.

8. Though we are in full agreement with the learned Advocate for the respondent no.1/writ petitioner, it is necessary to clarify the direction in order dated 22.02.2023, i.e. necessary steps to be taken to deal with unauthorised construction cannot be construed to take away right of the appellants to assail the reasoned orders dated 13.06.2024 and 20.08.2024 respectively in accordance with law.

9. We are informed the said reasoned orders have not yet been communicated to the appellants. However, a demolition notice has been issued against them which they have assailed in WPA 16654 of 2024.

10. In *J. S. Parihar vs. Ganpat Duggar*¹, the Apex Court held once there is an order passed on the basis of directions of the court, a fresh cause of action to seek redressal arises.

11. Correctness/validity of the reasoned orders passed pursuant to directions contained in order dated 22.02.2023 give rise to a subsequent cause of action which the parties are entitled to assail in an independent proceeding. Their validity cannot be examined within the domain of contempt jurisdiction.

12. In *Sudhir Vasudeva vs. M. George Ravishekar*², a 3-Judge Bench of the Apex Court, inter alia, held supplemental directions in contempt jurisdiction cannot entrench corrective jurisdictions like review or appeal.

13. Accordingly, right to access to justice against the reasoned orders by no stretch of imagination can be whittled down with reference to directions in order dated 22.02.2023 or the order impugned.

14. Under such circumstances, we direct the reasoned orders dated 13.06.2024 and 20.08.2024 be supplied to the appellants as well as to the respondent no.1/writ petitioner in course of the day. It shall be open to the parties to assail them in accordance with law, if so advised. The contempt proceeding shall be disposed of in light of the observations made in this order.

15. With these clarifications, appeal is disposed of.

¹ (1996) 6 SCC 291

² (2014) 3 SCC 373

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

17. There shall be no order as to costs.

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

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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