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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. 23595 of 2018

**Binod Kumar Maskara
Vs.
Kalna Municipality & Ors.**

Mr. Surojit Roy,
Mr. Amit Nath.

.... For the petitioner.

Mr. Tapas Kumar Adhikari. For the State.

Mr. Rudra Jyoti Bhattacharjee,
Ms. Debjani Ghosal.
... for the respondent Nos. 9 to 13.

Mr. Atanu Biswas.
... for the respondent Nos. 1 to 3.

Mr. Utpal Bose, Sr. Adv.
Ms. Debjani Mitra Neogy.
Mr. Vinnet Tibrewal,
Mr. A Sinha,
Ms. Rinki Saha.
... for the respondent Nos. 7 and 8.

The subject matter of challenge in this writ petitioner is construction allegedly made by the respondent Nos. 7 and 8 at holding Nos. 229 under Kalna Municipality in violation of relevant provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as the “said Act of 1958”).

It is contended by the learned advocate representing the petitioner that a complaint dated 1st November, 2018

was lodged addressed to the authorities of Kalna Municipality stating construction made by the respondent Nos. 7 and 8 at the aforesaid holding number which according to the petitioner violates Section 20A of the said Act of 1958. In support of the contention of the petitioner, Section 20A has been placed before this court in order to submit that no new construction activities are permissible within 100 meters from beginning of the limit of protected area or the protected Monuments since the area within radius of 100 meters is prohibited area. According to the petitioner construction has been made in contravention of Section 20A within prohibited area since it is within 100 meters radius from the temple called "Lalji Temple".

In support of the contentions made by the petitioner, attention of this court has been drawn to one memo dated 15 March, 2018 issued by the Sub-Divisional Officer Kalna addressed to the Joint Conservation Assistant, Archaeological Survey of India as well as concerned Block Land and Land Reforms Officer and Chairman of Kalna Municipality referring to a petition of one Pinaki Pandey and six others thereby requesting the addressees to take immediate action in connection with the said alleged construction. Vide subsequent memo dated 22nd March, 2018, the District Magistrate also informed that the petition was registered and forwarded for disposal to the office of the Chairman

Kalna Municipality and vide another memo dated 13th April, 2018, Chairman of Kalna Municipality informed the District magistrate, Purba Burdwan that no building plan was sanctioned by the Municipality permitting the respondent Nos. 7 and 8 to make construction.

During the course of hearing, it has also been submitted that there is no ambiguity that the alleged construction falls within the prohibited areas since respondent Nos. 7 and 8 by making applications in the prescribed format before the Archaeological Survey of India seeking necessary permission admitted that from the site of the said temple the distance of the construction which they have made is approximately 26 meters and in support of the same, reliance has been placed on pages 76 to 78 of the affidavit-in-opposition used by the respondent Nos. 7 to 8. Therefore, according to the petitioner the construction is contrary to the provision of Section 20A of the said Act of 1958 which requires immediate demolition.

Kalna Municipality is represented by learned advocate who has placed reliance on paragraph 7 of the affidavit-in-opposition used on behalf of the said municipality and it has been submitted that though the plan was sanctioned by the municipality but the communication dated 13th April, 2018 made by the Chairman Kalna Municipality was wrongly issued by the Chairman which was addressed to the District

Magistrate, Purba Burdwan.

Archaeological Survey of India being respondent Nos. 9 to 13 are represented by Mr. Rudra Jyoti Bhattacharjee, learned counsel who has pointed out that during construction which was being carried out at the instance of respondent Nos. 7 and 8 a stop work notice was issued on 10th February, 2018 but the same could not prevent the private respondents from making construction which triggered issuance of show cause notice dated 7th May, 2018 by the Superintending Archeologist as to why the necessary action should not be initiated against the private respondents under the provisions of the said Act of 1958 as amended by the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act 2010 for the unauthorized construction made at the prohibited area of a centrally protected monument. It is the stand of the Archaeological Survey of India that “Lalji Temple” is centrally protected monument. Therefore, no construction should be made within the prohibited area.

This court has posed queries to the learned advocate representing ASI whether based on said show cause notice dated 7th May, 2018 subsequent steps were taken by the concerned authority of ASI to bring the proceeding into logical conclusion or not? It has been replied that due to pendency of the writ petition steps were not taken.

Respondent Nos. 7 and 8 are represented by the Mr. Utpal Bose, learned senior advocate who submits that based on sanctioned plan dated 28th December, 2017 his clients started construction and according to the respondent Nos. 7 and 8 construction was made complete prior to issuance of stop work notice dated 10th February 2018. According to the private respondents there was no fault on their part since on obtaining requisite sanctioned plan from Kalna Municipality, which was accorded on 28th December, 2017 construction was made and the respondents Nos. 7 and 8 were not aware of the requirement of taking permission from the concerned authority of ASI. In addition thereto it has also been contended that in the prescribed format an application was made by them to the concerned authority of ASI seeking necessary permission to retain the construction which was already made based on plan sanctioned by Kalna Municipality on admitting the fact that the construction made by them is within the prohibited area as contemplated under Section 20A of the said Act of 1958.

It is further submitted that in spite of submitting such application in the prescribed format which is at pages 76 to 79 of the affidavit-in-opposition used on behalf of the said respondent Nos. 7 and 8, no decision till date has been taken by concerned authority of ASI

and according to relevant provisions of the said Act of 1958 ASI is required to take decision on such application of the respondent Nos. 7 and 8. In addition thereto, it has also been submitted that on receiving show cause notice dated 7th May, 2018, the same was responded to vide letter dated 8th June, 2018 by the respondent Nos. 7 and 8 and receipt was acknowledged by the concerned authority of ASI on 11th June, 2018 but thereafter no contemporaneous steps were taken to conclude the proceeding. It is contended that the criminal proceeding is pending against the respondent Nos. 7 and 8 as on date on alleged violation of the relevant provisions of the said Act of 1958.

The sum and substance of the submissions made on behalf of the respondent Nos. 7 and 8 is when an application has been made to the concerned authority of ASI seeking permission to retain the construction within the prohibited area and in response to show cause notice dated 7th May, 2018 when a letter was sent on 8th June, 2018 which was received on 11th June, 2016, the concerned authority of ASI is required to take decision on concluding the proceeding.

It is contended that at best in terms of Section 30 of the said Act of 1958, punishment can be imposed upon respondent Nos.7 and 8 but when construction has been made on obtaining sanctioned plan from the Kalna Municipality, such construction ought not to be

disturbed since the construction was complete in the year 2018.

Having considered the submissions made on behalf of the parties and on perusal of the records, it appears that the case has been made out by the petitioner based on Section 20A of the said Act of 1958 on the allegation that there has been gross violation of provision as contemplated under Section 20A at the instance of respondent Nos. 7 and 8 by making construction at the prohibited area. To that extent it also appears a stop work notice was issued in the month of February, 2018 and thereafter a show cause notice was issued on 7th May, 2018 by the Superintending Archeologist of ASI asking the respondent Nos. 7 and 8 to show cause as to why appropriate steps would not be taken in terms of the relevant statutory provisions. Subsequent thereto the show cause notice was responded by the respondent nos. 7 and 8. Therefore the proceeding which was initiated at the instance of the concerned authorities of ASI needs to be brought to logical conclusion in order to decide the fate of construction which was made by the private respondents within prohibited area.

Accordingly, the writ petition stands disposed of thereby directing the Superintending Archeologist or any other competent authority of Archeological Survey of India, to decide the fate of the construction made by the respondent Nos. 7 and 8 within a period of twelve weeks

from date after granting opportunity of hearing to the petitioner, Kalna Municipality and respondent Nos. 7 and 8 or their representatives and to pass a reasoned order taking into consideration the show cause notice which was issued on 7th May, 2018. The reasoned order which is to be passed as per aforesaid direction shall be communicated to the parties within one week thereafter.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Saugata Bhattacharyya, J.)