

07. 26.02.2024
Court No.6
(Tanmoy)

MAT 2406 of 2023

**Prakash Chandra Maity & Anr.
-Versus-
The State of West Bengal & Ors.**

**With
IA No: CAN/1/2024**

Mr. Anjan Bhattacharya, Adv.,
Mr. Sunny Nandy, Adv.,
Mr. Rajnish Kalawatia, Adv.,
Mr. Subha Pathak, Adv.

...for the appellants.

Mr. Sanjay Saha, Adv.

...for the respondent nos. 2&3.

Mr. Saurabh Guha Thakurata, Adv.,
Ms. Nilanjana Sarkar, Adv.

...for the respondent no.4.

Mr. Manoranjan Jana, Adv.,
Ms. Mitali Jana, Adv.

...for the respondent nos. 9&10.

Mr. Tanmoy Mukherjee, Adv.,
Mr. Souvik Das, Adv.,
Mr. Tapas Chatterjee, Adv.

...for the respondent nos. 11&12.

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

This appeal is directed against a judgment and order dated December 5, 2023, whereby the appellants' writ petition being WPA 12310 of 2023, was dismissed.

It appears that in an earlier round of litigation, Suprakash Maity and Purna Prakash Maity, who are the respondent nos. 9 and 10 in this appeal, had approached a learned Single Judge of this Court by filing WPA 18062 of 2019, complaining of illegal construction by the private respondents in that writ petition, one of

whom, Prakash Chandra Maity, is the present appellant. The learned Judge noted that the writ petitioners in that proceeding had made representation before the *Pradhan* of the concerned *Gram Panchayat* seeking demolition of the alleged unauthorized construction. Accordingly, the learned Judge disposed of the writ petition with the following directions:-

“As it appears that the Executive Engineer of the Gram Panchayat has already intimated the petitioners that there is no record with regard to grant of sanction for making construction in respect of the aforesaid plot of land, accordingly, the instant writ petition is disposed of by directing the respondent No. 3, the Pradhan of the Talgachhari-I Gram Panchayat to take a decision with regard to the prayer of the petitioners for demolition of the unauthorized construction, strictly in accordance with law after giving a reasonable opportunity of hearing to all the necessary parties at the earliest, but positively within a period of three months from the date of communication of a copy of this order.

The aforesaid respondent shall pass a reasoned order and communicate the same to the parties immediately thereafter.”

Pursuant to the aforesaid direction, proceedings were held by the appropriate Authority and the Sub-Divisional Officer, Contai, passed an order dated May 3, 2023, directing demolition of the impugned construction. Challenging such demolition order, the appellants herein approached the learned Single Judge in the present round of litigation.

The learned Judge, after considering the entire material on record, came to the conclusion that there is no sanction from the Competent Authority for

construction on J.L. No. 204 in front of Plot No. 104/240. The learned Judge also noted that the writ petitioner has made an application dated April 3, 2023, addressed to the District Engineer, Purba Medinipur *Zilla Parishad* for regularization of a three-storeyed residential building on J.L. No. 204 and 205 on Plot/Dag Nos. 2, 3 and 104/240, Khatian Nos. 520, 741 and 1172. The learned Judge observed that the aforesaid communication would clearly demonstrate that there was no permission for raising construction over J.L. No. 204, Plot No. 104/240 and, therefore, the application for *post facto* permission had been made. The learned Judge also noted that the *Panchayat* and the Sub-Divisional Officer afforded reasonable opportunity of hearing to all the concerned parties and opportunity was granted for production of relevant documents in support of the impugned construction. The learned Judge dismissed the writ petition with the following observations:-

“As the petitioners failed to produce any document in support of the construction made, the order of demolition has been passed. The Court does not find any error in the said order of demolition.

In view of the above, the Court refrains from interfering with the order of demolition.”

Being aggrieved, the writ petitioners are before us by way of this appeal.

We have heard Mr. Anjan Bhattacharya, learned Advocate appearing for the appellants/writ petitioners at some length. Mr. Bhattacharya pointed out various

documents annexed to the stay petition and to the supplementary affidavit in support of his argument that permission was duly granted by the Competent Authority for making construction on J.L. No. 204. However, all such documents either pertain to J.L. No. 205 or are money receipts or applications made even in respect of J.L. No. 204. However, no sanctioned plan or any other written permission could be produced or shown to us for construction on J.L. No. 204.

Accordingly, we do not find any infirmity in the order under appeal. No construction can be made without a sanction from the Competent Authority.

The appeal being MAT 2406 of 2023 and the connected application being IA No: CAN/1/2024, therefore, fail and are dismissed, without any order as to costs.

Mr. Bhattacharya says that the appellants' application made to the *Zilla Parishad* should be disposed of expeditiously.

Let such application be disposed of in accordance with law as soon as possible.

Urgent photostat certified copy of this order, if applied for, be made available to the parties, upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Gaurang Kanth, J.)