

11.06.2024
Sl. No.01
Cp

Calcutta High Court
In the Circuit Bench at Jalpaiguri

WPA No. 1120 of 2024

Santosh Prasad Saha

Versus

Siliguri Municipal Corporation & Ors.

Mr. Ashish Kumar Pandey
Mr. Prajwal Gurung

...for the Petitioner.

Mr. Hirak Barman
Ms. Rima Sarkar

...for the State.

Mr. Deborshi Dhar

...for the Corporation.

1. The writ petition has been filed challenging an order dated May 10, 2024, passed by the Commissioner, Siliguri Municipal Corporation. By the order impugned, the petitioner was asked to demolish the unauthorized construction within May 21, 2024. Upon expiry of the aforementioned period, the corporation started to demolish the structure. The matter was mentioned for urgent hearing. Accordingly, the matter has been listed today.
2. The petitioner contends that the order impugned ought to be set aside on the following grounds:-

- a) The notice was incomplete.
 - b) Proper opportunity of hearing was not given to the petitioner.
 - c) The extent of unauthorized construction had not been stated in the order. The order was unreasoned.
 - d) The entire action of the authority was in violation of the principles of natural justice.
 - e) Only three days time was given to the petitioner to respond to the notice of demolition and the petitioner could not raise his objections properly.
3. It is submitted that petitioner could not apply for sanction as the petitioner was allegedly rehabilitated on government land as a protective measure during the Gorkha movement, but he was not granted any legal document. The petitioner could not apply for sanction without proper document of possession.
4. Admittedly, an onsite inspection had been conducted by the technical officials of the Siliguri Municipal Corporation on March 18, 2024 and it had been reported that the construction was carried out by the petitioner in violation of the Rules. The petitioner was asked to appear before the Commissioner, Siliguri Municipal Corporation

for further hearing along with the sanction plan and other relevant documents, justifying such construction.

5. It is not in doubt that the notice was received by the petitioner. There does not appear to be any document which would show that the petitioner had sought for further time to respond to the said notice. Rather, the petitioner appeared at the hearing along with the complainant who had alleged before the authority that the petitioner's construction was illegal. The complainant submitted before the authority that the petitioner and the complainant had been occupying land along with a tin structure and shops standing thereon, but the petitioner started to construct a building without obtaining any sanction plan. The notice issued to the petitioner indicates that there was an allegation of illegal construction against the petitioner and such construction was contrary to the Rules. Such notice is sufficient.
6. The petitioner could not deny such contention of the complainant. The petitioner submitted before the Commissioner that the land on which he was residing was vested to the government and he did not obtain any sanction building plan for the construction.

7. Having heard the parties and upon perusing the inspection report, the Commissioner found that a two storeyed building covering an area of 212.80 sq. metres (approximately) had been constructed by the petitioner. The said construction was without a plan. Even the required open spaces as per the West Bengal Municipal Building Rules, 2007 has not been kept. The petitioner could not deny or dispute the violations of the law. Accordingly, by applying Sub-Rule (1) of Rule 11 of the West Bengal Municipal Building Rules, 2007 read with Section 287 of the West Bengal Municipal Corporation Act, 2006, the construction was held to be illegal. The petitioner failed to obtain prior sanction or permission for such construction.
8. Under the aforesaid circumstances, the Siliguri Municipal Corporation did not have any other option, but to direct demolition. Even today, before this court, the petitioner has not been able to justify the construction. There is admittedly no sanction. The petitioner could not have raised any construction without permission from the authority. Temporary tin shed structures which were already in the premises could have been enjoyed by the petitioner. Temporary tin structures do not need

sanction, but when the petitioner proposed to raise a permanent construction he was bound by law to obtain permission.

9. The contention of the petitioner that without proper allotment of the land in his name, the petitioner could not apply for construction, cannot be a ground for the petitioner to proceed with the illegal construction on his own accord, by assuming that he would have had an excuse for raising the construction under the facts and circumstances in which he was allegedly put in possession of the land.
10. Under such circumstances, the writ petition fails. The law has been strictly interpreted and it is well-established that an unauthorized construction cannot be allowed to stand for a single day.
11. Reference is made to the following decisions:-
 - (a) *Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn.*, reported in (2021) 10 SCC 1.
 - (b) *Friends Colony Development Committee v. State of Orissa* reported in (2004) 8 SCC 733.
 - (c) *Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai* reported in (2013) 5 SCC 357.

(d) *Priyanka Estates International (P) Ltd. v. State of Assam* reported in (2010) 2 SCC 27.

(e) *Dipak Kumar Mukherjee v. Kolkata Municipal Corpn.* reported in (2013) 5 SCC 336.

12. Some of them are discussed below:-

13. In the matter of *Dipak Kumar Mukherjee v. Kolkata Municipal Corpn.* (supra), the Hon'ble Apex Court held as follows:-

"24. In view of the pleadings filed before the High Court and the affidavits filed before this Court, there is no escape from the conclusion that Respondent 7 had raised construction in violation of the plan sanctioned under Section 396 of the 1980 Act and continued with that activity despite the order of the Mayor-in-Council. In the prevailing scenario, the representative of Respondent 7 might have thought that he will be able to pull strings in the power corridors and get an order for regularisation of the illegal construction but he did not know that there are many mortals in the system who are prepared to take the bull by horn and crush it with iron hand.

29. It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorised construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the public

authorities concerned not only to demolish such construction but also impose adequate penalty on the wrongdoer."

14. In the matter of *Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn.* (supra), the Hon'ble Apex Court discussed the duties of the civic bodies and lamented the sorry state of affairs as under:-

"167. The Court further observed that an unauthorised construction destroys the concept of planned development, and places an unbearable burden on basic amenities provided by public authorities. The Court held that it was imperative for the public authority to not only demolish such constructions but also to impose a penalty on the wrongdoers involved. This lament of this Court, over the brazen violation of building regulations by developers acting in collusion with planning bodies, was brought to the forefront when the Court prefaced its judgment with the following observations : (Esha Ekta Apartments case [Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai, (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89] , SCC p. 363, para 1)

15. In *Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai* (supra), the Hon'ble Apex Court observed as follows:-

"8. At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that

someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their hands and get away with it.”

16. Writ of mandamus cannot be issued directing the authority to perpetuate a wrong by allowing an unauthorized construction to continue.

17. In the decision of ***Oriental Bank of Commerce v. Sunder Lal Jain*** reported in (2008) 2 SCC 280, the Hon’ble Apex Court held as follows:-

“11. The principles on which a writ of mandamus can be issued have been stated as under in *The Law of Extraordinary Legal Remedies* by F.G. Ferris and F.G. Ferris, Jr.:

Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

Note 206.- ... The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action.

12. These very principles have been adopted in our country. In Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh after referring to the earlier decisions in Lekhraj Sathramdas Lalvani v. N.M. Shah, Rai Shivendra Bahadur (Dr.) v. Nalanda College and Umakant Saran (Dr.) v. State of Bihar this Court observed as follows in para 15 of the Reports (SCC): (Sipahi Singh case, SCC pp. 152-53)

15. ... There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.... In the instant case, it has not been shown by Respondent 1 that there is any

statute or rule having the force of law which casts a duty on Respondents 2 to 4 which they failed to perform. All that is ought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that Respondent 1 was not entitled to apply for grant of a writ of mandamus under Article 226 the Constitution and the High Court was not competent to issue the same.

Therefore, in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities...."

18. The writ petition is, thus, dismissed.

19. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)