

Ashok Gupta and anr Vs. State of West Bengal and ors

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Court : Kolkata

Decided On : Feb-25-2014

Judge : Dr. Sambuddha Chakrabarti

Appellant : Ashok Gupta and anr

Respondent : State of West Bengal and ors

Judgement :

ORDER

SHEET WP No.808 of 2013 IN THE HIGH COURT AT CALCUTTA Constitutional Writ Jurisdiction ORIGINAL SIDE ASHOK GUPTA AND ANR Versus STATE OF WEST BENGAL AND ORS BEFORE: The Hon'ble DR.

SAMBUDDHA CHAKRABARTI Date : 25th February, 2014.

Appearance: Ms.Ashmita Chakraborty, Adv.Ms.Aparajita Chatterjee, Adv.Mr.Rajdeep Bhattacharya, Adv.Mr.B.Mitra, Adv.Ms.Debjani Mitra, Adv.Mr.Barin Banerjee, Adv.Ms.Sima Chakraborty, Adv.Mr.Gopal Chandra Das, Adv.Mr.Debangsu Mondal, Adv.The Court : The petitioners are directed to add the Kolkata Municipal Corporation as a party respondent.

cause title be amended here and now.

Let the Service of notice upon the added respondent is dispensed with since Ms.Chakraborty has appeared for the respondent Nos.4, 5 and 6.

By this writ petition the petitioners have, inter alia, prayed for a writ in the nature of mandamus commanding the respondent No.3 to refrain from entering the concerned premises, forcefully stalling the construction work and for other reliefs.

The case of the petitioners.inter alia, is that they had applied before the Kolkata Municipal Corporation (for short the Corporation) for sanctioning their plan for reconstruction of a part of the premises.

The respondent Nos.7 & 8 filed a writ petition being aggrieved by the construction made by the petitioners.The said writ petition was disposed of by an Hon'ble Judge of this Court by directing the municipal authorities to dispose of the representation pending before them by passing a reasoned order.

Subsequently, a notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 (for short the Act) was issued by the Corporation directing the petitioners to forthwith stop all construction works.

By an order dated February 15, 2012 the Corporation had directed the petitioners to portion of the structure.

representation before the demolish the unauthorised The petitioners.in turn, made Corporation to enable construct wall as per the sanctioned plan and, them to thereafter, to demolish the unauthorised construction as per the order dated February 15, 2012.

Apart from having grievances against the respondent Nos.7 & 8 for obstructing the work of construction, the petitioners are also aggrieved by the alleged acts of the respondent No.3 who was reportedly threatening the petitioners with dire consequences.

According to the petitioners.the respondent No.3 being the Officer-in-Charge of the police station is not competent to seize the masons engaged construction of the said work.

letter dated July 10, by the petitioners for It further appears that by a 2013, the petitioner made a representation to the said respondent no.3 requesting him to enable them to complete the construction of the said wall as per the sanctioned plan.

None has appeared to represent the State respondents.

It may be mentioned that on the last occasion, as well, none appeared on behalf of the State respondents and even today in spite of service of notice to the learned advocate to the State respondents, none appeared on behalf of the State to oppose the prayer of the petitioners. Let a copy of the notice filed in Court today be kept with the records.

Thus, this is a case of over action by the police authorities and the petitioners have alleged that the police had no authority to enter into the residential building any time and as such, they may be restrained from doing the same.

I quite appreciate the submissions made by the petitioners and direct the said respondent authority only to act strictly respondent in accordance with permitted to law and in overstep no his case any individual jurisdiction.

Mr. Banerjee, learned advocate, appearing for the respondent corporation submits that the petitioners have not demolished the unauthorised construction which they were supposed to do on the strength of the order passed by the Corporation authorities.

All that they have done is to make a representation quoting the opinion of an engineer and they have not implemented the order of the corporation by projecting an demolishing the unauthorised construction.

Mr. Banerjee further submitted that opinion of an engineer the respondents have not carried out the work of demolition for over a period of two years. Till such time the Corporation passes the final order, I direct the petitioners not to undertake any further act of construction.

While this may be very true, I am of the view, that the Corporation was also required to take a more expeditious steps to dispose of the representation made by the petitioners. As such, the writ petition is disposed of by directing the respondent no.3 not to indulge in any act in future which is not authorized by law.

pending with Corporation the shall Since the representation has been Corporation dispose of for the quite same sometime, strictly the within a period of three weeks from the date of communication of this order and the Corporation is further directed to pass a fresh order after giving the parties an opportunity of hearing.

With the above observations, the writ petition is disposed of.

(DR.

SAMBUDDHA CHAKRABARTI, J.) CS

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