

Md. Moktar Ali Molla Vs. the State

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Court : Kolkata

Decided On : Jan-15-1996

Reported in : (1996)1CALLT345(HC)

Judge : Bijitendra Mohan Mitra, J.

Acts : West Bengal Religious Building and Places Act, 1985 - Sections 5, 5(1), 5(2), 6 and 6(2); ;[Constitution of India](#) - Article 226;

Appeal No. : C.O. No. 20409(W) of 1995

Appellant : Md. Moktar Ali Molla

Respondent : The State

Advocate for Def. : Hasi Ghosh Sinha, Adv.

Advocate for Pet/Ap. : Mohinoor Rahaman, Adv.

Judgement :

Bijitendra Mohan Mitra, J.

1. In this writ petition a challenge has been thrown about an order dated 21.8.95 passed by the District Magistrate, North 24-Parganas, Barasat vide Memo No. 1369/GM. From the perusal of the aforesaid Memo it appears that the order is dated 21.8.95 and in the said order police reports are considered and they

appeared to have been relied upon. From the reference of the police report it appear that in Village Ghosalati there has already been a Mosque and in the adjoining village there is another Mosque for participation in the religious prosecution of the minority group living in the said village having faith in Islamic religion. There have been further reference in the said order about a report received from S.P. and Additional S.P. of the District that the Muslim population of the village Ghosalati is divided into two groups and there exists a dispute between them. The minority group of the Muslim population in the said village started using a room of the house of the Din All Molla as a Mosque a couple of years ago and made attempts earlier to reconstruct the room as Mosque without permission from the competent authority. The utilisation of a room in the house of the said Din All Molla as a Mosque is a central fact which is bordering on the crux of the issue. A reference in this context may be made to the West Bengal Religious Building and Places Act, 1985 and in terms of Section 5 thereof it is stipulated that no person without obtaining the permission in writing of the Collector of the District or the Commissioner of Police in Calcutta can either construct a public religious building or convert any private building into a place of public religious belief. The same has been further highlighted by the provisions incorporated under Sub-section (2) of Section 5 of the said Act which stipulates that any person requires to obtain permission for any construction or conversion under subsection (1) shall first obtain permission for such construction. Here on the factual score a finding is recorded that the utilisation of the room in the house of Din All Molla as a place of public religious worship was sought to be made without obtaining any prior leave or permission in terms of section 5(2) of the said Act, If the pre-requisite condition is not fulfilled then any exercise of such Act in a building for which no permission has been obtained becomes manifestly denuded of the sanction of the statute.

2. The learned Advocate appearing on behalf of the writ petitioner has referred to relevant dates of the application made for obtaining permission which is 18th May, 1994 and the same was received by the authorities concerned on 20th May, 1994. The application was disposed of by an order dated 21st August, 1995. The principal submission of the learned Advocate of the petitioner is centered round the construction of Section 6(2) of the West Bengal Religious Building and Places Act, 1985 and according to his contention that the same required to be

communicated within a specified period as contemplated under the Act and the same not having been done the mischief of giving effect should be invoked therefrom. Section 6 postulates by way of compliance of pre-requisite formalities of fulfilling the condition as envisaged under Section 5(1) of the said Act and before utilisation of the same a formal permission is required to be obtained. Here a finding recorded is that the same is being utilised for a couple of years and early attempts were also made to reconstruct the same without prior permission from the requisite authority. Here in absence of fulfilment of prerequisite conditions as contained in Section 5(2) of the said Act and on the contrary when there is an apparent violation of fulfilment of the prerequisite condition, doubt emerges as to whether provisions of Section 6 in terms of its letter can be set on motion in absence of foundation. Here the foundation for holding an enquiry and to accord sanction is apparently found to be denuded because of patent contravention of Section 5, subsection (2). If attempts for rigid construction of Section 6 are to be appreciated, then the same is required to be taken into account including those of fulfilment of pre-requisite condition either of Section 4 or Section 5. Here the aforesaid finding contained in the order, namely, that a room in a private house was being used as a Mosque for couple of years without the permission and that having been done, the conditions to be basically fulfilled with regard to invocation of Section 6 are found to be absent.

3. The learned Advocate appearing on behalf of the petitioner has strenuously contended with regard to the construction of the deeming provisions and he has relied on an unreported decision of Altamas Kabir, J. in CO. No. 15250(W) of 1992 in the case of Abdul Latif Sheikh v. State of West Bengal and Ors. dated 8.4.93 and he has also appreciably made his submission with devotion and endeavour by drawing attention of this court from Law Lexicon about the effect and meaning of the deeming provision. The said question becomes otiose in the context of the views held by this court and it may be a matter of academic formality as this court feels that in the wake of finding recorded that there has been a persistent noncompliance of provision of Section 5, Sub-section (2) of the West Bengal Religious Building and Places Act, 1985. Therefore, the conditions prescribed for invoking the procedure contemplated under Section 6 are found to be absent. They would have been presented had there been fulfilment of all the terms and

conditions by way of pre-requisite conditions as envisaged under Section 5 of the West Bengal Religious Building and Places Act, 1985. This court has also taken into account about the finding recorded that in a village already a Mosque for public worship is there and there is another Mosque in the contiguous village and in the backdrop of the police report about the division of population affiliated to a particular group, the appropriate authority did not exercise its discretion after assessment of the matter on the factual score and it has probable bearing in the law and order situation. This court in exercise of its Jurisdiction does not feel inclined to interfere with the said order and the plea of discretion on a factual finding and for the reasons as aforesaid. Nevertheless this court appreciates the learned Advocate's endeavour to assist the court and this type of assistance is heartening for the court to note in cases of junior members of the professions. This court on the reasons as aforesaid dismisses the writ petition because of its interpretation of the provisions of the relevant Section of the statute and of its assessment about the finding on factual, aspect.

4. After conclusion of the judgment, attention of this court has been drawn to the provisions incorporated under Section 8 of the West Bengal Religious Building and Places Act, 1985 about the provisions of appeal and as this writ proceeding was initiated, therefore, the learned Advocate appearing on behalf of the petitioner has sought leave to prefer an appeal so that factual context can be assailed and the said leave is granted and the time consumed for preferring instant writ petition will be excluded for the purpose of computation of the period of appeal.

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