

Bhaskar Gupta Roy and anr. Vs. the West Bengal Pollution Control Board and ors.

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Court : Kolkata

Decided On : Dec-19-2007

Judge : S.S. Nijjar, C.J. and ;Tapen Sen, J.

Appeal No. : W.P. No. 260 of 2006

Appellant : Bhaskar Gupta Roy and anr.

Respondent : The West Bengal Pollution Control Board and ors.

Advocate for Def. : Anindya Mitra, ;Saktinath Mukherjee and ;P.K. Das, Sr. Advs., ;Amiya Narayan Mukherjee, ;Deep Narayan Mukherjee and ;Kishore Dutta, Advs. for Respondent No. 9;Alok Ghose and ;Achintya Banerjee, Advs.;

Advocate for Pet/Ap. : Samapti Chatterjee, Adv.

Disposition : Petition dismissed

Judgement :

S.S. Nijjar, C.J.

1. This Writ Petition has been filed by the residents of Prince Anwar Shah Road and Prince Gulam Md. Shah Road, Kolkata. The Writ Petition has been filed as Public Interest Litigation. Most of the grounds taken in the Writ Petition are

identical with the grounds taken in the Writ Petition No. 2087 of 2005. When the Writ Petition came up for hearing on 16th of December, 2005, this Court declined to grant stay on the ground that substantial building work had already progressed and further that the petitioners were aware of the sanction of the building right from October, 2003. Thereafter, this Writ Petition has been listed for hearing along with Writ Petition No. 2087 of 2005 on all occasions. It was, however, sought to be submitted by the counsel for the petitioner that separate order ought to be passed in the present writ petition. We are of the considered opinion that this Writ Petition is virtually identical to Writ Petition No. 2087 of 2005 and, therefore, clearly two divergent orders cannot be passed in the two Writ Petitions.

2. The respondents have filed an affidavit-in-reply to the preliminary objections. It has been stated that the present writ petitioner has been set up by Javed Ahmed Khan who moved W.P. No. 2087 of 2005. The aforesaid writ petition was moved on 16th December, 2005 but no interim relief was granted. In the affidavit-in-opposition to the aforesaid writ petition it had been pointed out that Javed Ahmed Khan was not residing anywhere near the Plot No. 375. Therefore, the writ petition was not maintainable. In support of the aforesaid submission the respondents had relied on a Division Bench judgment in Writ Petition No. 592 of 2003 decided on 6th February, 2004 wherein it was held as follows:

As per the aforesaid norms, this is not a public interest litigation that somebody is agitating for poor man's right or espousing the cause of public at large. This is a private interest which is sought to be served. The petitioner who is residing 10 Km. Away has suddenly woke up to file this present public interest litigation involving the pollution of area and ecological balance when all clearance has been given. This is nothing but the abuse of process of court and we cannot allow to put any opposition by filing the present writ petition to construction where the area has been developed and some more people are coming that side. This petition is not a bonafide one. Hence, the writ petition is totally misconceived and the same is dismissed with costs assessed at Rs. 10,000/-. The petitioner shall deposit the cost of Rs. 10,000/- to the Registrar, Original Side, within one month.

3. In order to avoid the ratio of the aforesaid Division Bench judgment the present petitioner has been set up to file the writ petition.

4. We have examined the entire matter. Throughout the proceeding, the hearing of the present Writ Petition was taken up along with W.P. No. 2087 of 2005. Record would also show that averments made several paragraphs have been bodily lifted from Writ Petition No. 2087 of 2005 and have been incorporated in the present writ petition. The paragraphs from the earlier writ petition have been quoted verbatim in the present writ petition. We are also satisfied that the writ petition has been filed only to avoid the observations of the Division Bench quoted above.

5. We are of the opinion that this writ petition is also not maintainable for the reasons stated in the judgment delivered in Writ Petition No. 2087 of 2005.

6. The Writ Petition is, therefore, dismissed.

Tapen Sen, J.

7. I agree.

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