

IN THE HIGH COURT OF JHARKHAND AT RANCHI
L.P.A. No. 83 of 2015

Gouranga Dutta

--- --- Appellant

Versus

1. Mineral Area Development Authority (MADA)
Through its Managing Director, Dhanbad.
2. The Deputy Commissioner, Dhanbad.
3. The Circle Officer, Dhanbad.
4. Executive Engineer (Town Planning), MADA, Dhanbad.
5. A.K. Pandey
6. Dhanbad Municipal Corporation through its Municipal
Commissioner, Dhanbad.
7. Chief Executive Officer, Dhanbad Municipal
Corporation, Dhanbad. --- --- Respondents

CORAM: The Hon'ble Mr. Justice Aparesh Kumar Singh
The Hon'ble Mrs. Justice Anubha Rawat Choudhary

Through : Video Conferencing

For the Appellant	: Mr. A.K. Das, Adv.
For the State	: Mr. Prabhat Kumar, S.C.II
For the Amicus Curiae	: Mr. V.K. Prasad, Adv.
For the MADA	: Mr. Ashok Kumar Singh, Adv.
For the Resp.No.5	: Mr. R.S. Mazumdar, Sr. Adv. Mr. Rohan Mazumdar, Adv.

22/08.07.2020 This appeal is by the aggrieved writ petitioner against the impugned judgment dated 13th January 2015 whereby learned Single Judge has held as follows :-

“4. From the pleadings in the writ petition, I do not find any statement disclosing identity of the petitioner except, the statement that the petitioner is a citizen of India. To a pointed query, which of the right of the petitioner has been violated due to alleged illegal construction made by the respondent no.5, the learned counsel for the petitioner is unable to disclose the same. The learned counsel for the respondent-MADA has submitted that the respondent no.5 has made application for regularization of the excess construction made by him. In the writ petition itself it has been stated that notice dated 10.08.2010 was issued to the respondent no.5 by MADA. The writ petition is bereft of foundational fact for issuing mandamus. The petitioner has not disclosed any legal right in him for seeking a direction upon the respondents. Of course, the respondents are under duty to ensure construction in terms of sanctioned building plan however, duty casts upon the respondents would not confer a right upon the petitioner to seek a mandamus against the respondents. It is well-settled that for seeking a mandamus, a person must first establish a legal right in himself and a corresponding duty, which the respondent has failed or neglected to discharge. I do not find any merit in the writ petition. The present writ petition appears to be filed to settle personal grudge

with respondent no.5 and therefore appropriate cost should be imposed upon the petitioner which is quantified at Rs.10,000/- (ten thousand). Accordingly, the writ petition is dismissed with cost of Rs.10,000/- (ten thousand) imposed upon the petitioner which shall be paid by the petitioner within six weeks to the Jharkhand State Legal Services Authority, Ranchi (JHALSA). A copy of order be transmitted to the Secretary, Jharkhand State Legal Services Authority, Ranchi (JHALSA).”

When the matter was brought to the Letters Patent Court, the issue of deviation in the construction from the sanctioned plan as pointed out by the Regional Development Authority i.e. MADA, was taken up with the Dhanbad Municipal Corporation (DMC) vide order dated 18th June 2018. Thereafter, vide order dated 5th September 2018 the respondent-DMC was asked to explain whether the construction by the private respondent was legal or not since the private respondent had made an application for regularization by payment of compounding fee, etc. Later by order dated 24th October 2018 the Town Planner under respondent no.6 DMC was directed to take a decision on the application for regularization of construction made by the respondent no.5. However, since after repeated adjournments there was no representation on behalf of the DMC, learned Coordinate Bench of this Court was constrained to appoint Mr. V.K. Prasad as an Amicus Curiae to assist the Court properly. He was directed to take all instructions from the DMC. DMC was also directed to supply all the details of the case, papers of the case as well as all the affidavits, reports to the learned Amicus Curiae. DMC was directed to deposit Rs. 50,000/- before the learned Registrar General of the Court vide order dated 25th February 2019. The matter was adjourned thereafter on few dates and taken up during the pandemic on 8th June 2020. However, since the name of learned Amicus Curiae was not reflected in the cause list, the case was adjourned to be listed in the week of 6th July 2020. Thereafter, learned Amicus Curiae on instructions of the DMC has filed a supplementary affidavit dated 4th July 2020.

Learned counsel Mr. A.K. Das for the appellant; Mr. Prabhat Kumar, learned S.C. II for the State; Mr. V.K. Prasad, learned Amicus Curiae; Dr. Ashok Kumar Singh for the respondent MADA and Mr. R.S. Mazumdar, learned senior counsel assisted by learned counsel Mr. Rohan Mazumdar for the respondent no.5 are present through video conferencing.

Learned Amicus Curiae has referred to the corrigendum letter no.1875 dated 25th June 2020 (Annexure-D to the affidavit) which indicates

that the deviation has been regularized on payment of Rs.6,63,712/- and production of a no objection certificate from the Fire Fighting Department. Learned Amicus Curiae is allowed time to seek further instructions on this affidavit as to the provisions under the relevant Act and the Bye-laws, whereunder this regularization has been made.

Let the case be listed on 21st July 2020.

(Aparesh Kumar Singh, J.)

(Anubha Rawat Choudhary, J.)

Shamim/