

(1999) 08 CAL CK 0032
In the Calcutta High Court

Case No : Constitution Writ Jurisdiction W.P. No. 1652 (W) of 1999

Syed Wasique Bahadur

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 30-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 1 CALLT 24

Hon'ble Judges : Satyabrata Sinha, J;Mahemmad Habeeb Shams Ansari, J

Bench : Division Bench

Advocate : Mr. D.N. Roy, Mr. Saikat Banerjee and Mr. P. Dhar, for the Appellant;
Mr. Indrajit Sen and Mr. Prodyot Dutta, for the Respondent

Judgement

S.B. Sinha. ACJ.

1. This application in the nature of Public Interest Litigation has been filed by a former student of Nawab Bahadur Institution, Murshidabad praying for the following reliefs:--

"(a) Issue a writ in the nature of mandamus commanding the Respondents specifically the Respondents Nos. 2, 6 and 7 to forbear from doing anything pursuant to and In furtherance to the said tender a copy being annexure "G" to this application which may spoil, disfigure or destruct any portion of Nawab Bahadur Institution and its original fabric.

(b) Issue a writ in the nature of mandamus commanding the Respondent Nos. 2 and 6 to renovate and/or repair the school building by taking and completely following the Instructions of Archaeologists and Excavationists in the matter of preservation of the original fabric of the school building.

(c) Issue a writ in the nature of Mandamus directing the Respondents Nos. 2 and 6 not to construct R.C.C. ceilings in the said school building and/or to do any tear and wear for such purpose."

2. The petitioner contends that the said school is of immense historical legacy and heritage. It was built by Munni Begum, the wife of Mirzafar and was known as Mubaraq Mahal. It was in that building that Mubaraq-ud-daula, the fourth son of the said Mirzafar and Munni Begum was born and brought up. The said Mubaraq-Ud-Daula was later on coroneted as the Nawab Nazim of Bengal, Bihar and Orissa. In course of passing of time, however, the said building was converted into a school. The responsibility of maintaining the said school after abolition of Nawab Nazim was taken by Government of West Bengal. Admittedly, the building is in a dilapidated condition and required a thorough repair. The petitioner contends that although he is not against renovation of the building but keeping in view its heritage value the renovation and repair works should be carried on in terms of the letter dated 23.10.98 as contained in annexure "F" to the writ application which is as follows :--

"Enclosed herewith a copy of the letter received from the Ex-students Association of Nawab Bahadur's Institution at Murshidabad which is self explanatory.

While appreciating the concern of Ex-students for preservation of Heritage Buildings at Murshidabad, it may be mentioned here that if we consider Murshidabad a Heritage Town, then it is the duty of all of us to preserve the original fabric of all heritage buildings of Murshidabad. Further, I am happy to record that it is the only town besides Calcutta where we notice so much of public awareness for Heritage Buildings.

In this context while agreeing with the opinion expressed by the Ex-students on the above referred letter it is suggested that R.C.C. roofs are never advisable to a Heritage Buildings. It would not only sport the original fabric of the Building, but also it won't be compatible to the Building. Therefore, it is requested kindly intervene into the matter and see that justice is done in repairing the said Heritage Building at Murshidabad. In this context if any technical advice is required we would certainly extend it."

3. However, despite the same and tender had been invited by the State of West Bengal in a newspaper, viz. Ganashakti dated 23rd November, 1998 for renovating and/or repairing the said building.

4. The Nawab Bahadur's Institution Ex-Students' Association by a letter dated 30.11.98 requested the Superintending Engineer to stop all processes in regard to any kind of renovation work at the building of Nawab Bahadur's Institution. The petitioner also contends that the State of West Bengal has constituted a Commission for preservation of the Heritage Building.

5. An Affidavit-in-Opposition has been filed by Executive Engineer. P.W.D wherein it has been denied and disputed that by renovation of the said school historical carvings or the Images or the sculptures or the fabrics with which the structure of the said school building was originally built up, would effectively be destroyed completely. It is stated :--

"In this context I state that condition of roof of existing building Is precarious/ dangerous and is very much unsafe for use as a public building. In fact a part of roof of the said school building has already collapsed and some part may also collapse at any moment. The Head Master of the institution has already expressed his anxiety in this matter. The school building has been thoroughly inspected by the departmental officers and all of them have come to the conclusion that the existing roof should be replaced keeping the outer appearance of the building In "as it is" condition. It has already been decided that the dome over the building should not be dismantled and only repairing work to keep the dome safe should be taken up in such a way that its outer appearance remains the same as at present. In fact many of the wooden beam by which the roof is supported are unsafe and are to be replaced at the earliest opportunity. It is also to be mentioned that different burgers are also in a dangerous condition and also the condition of roof tiles and the lime terracing over these tiles has become poor and particularly these have outlined their life. Considering all of these aspects it was decided that the roof should be replaced by an R.C.C. Slab. It is also to be noted that the earlier old wooden stair case had to be replaced by an R.C.C stair case along with the R.C.C roof slab in the stair room when the wooden portion was damaged."

6. An independent Architect was appointed by a Division Bench of this court. It appears that pursuant loan order by a Division Bench dated 18.1.99 when an Interim order has been passed, the report had been filled by an Independent Architect Sri Amit Ray. In the said report, it is stated :--

"It cannot be coined to be an example of the period when it was first constructed. It's structure had been altered, modified and expended to cope with the changing requirement, keeping pace with the changing construction technique and new material. All of these additions, alteration and modification, carried out by various Architects and Engineers time to time, were carefully planned to be In line with the existing Architecture.

7. Presently the building is in a very delicate state, specially Its first floor roof, which is showing signs of collapse of Its structural elements In most of the places. Some of the timber beams and rafters with the supported tiles and lime terracing, had already collapsed. Out of which several of them has been patched up with comparatively modern materials available at the time of its repair. To say specifically, while so doing, materials varied from original wood work to rolled steel section and to more recent materials like reinforced cement concrete.

8. The use of reinforced cement concrete can save a building like this one by providing a solid, stable and for lighter roof over Its present and future habitants for years to come. It will also provide the needed lateral tie to protect it from its disintegration specially the projected veranda portions. In the newer parts of the building the said lateral ties had already been provided, during the time of Its construction, in the form of mild steel tie bars threaded In both ends and anchored with mild steel plates and nuts. This method however cannot be

adopted for the older part because of Its age and nature of construction. If forced to do so could prove disastrous physically as well as economically. On the other hand use of reinforced cement concrete roof will overcome this situation effectively as well as economically over and above the advantages it will provide as mentioned earlier.

9. Considering the age of this particular building it need to be preserved and restored as far as practically could be done by possible means without destroying, defacing or demolishing the existing carvings and mouldings. Internally there had been none in special except the plain plastered walls. In regards to the external walls and perimeter of the building it has been explained that the Intention of the State Government is to preserve, as far as practicable, by way of restoration, repair or otherwise the overall out look of the building. Until or unless the building undergoes repair the functional utility of the building will be jeopardized and the school has to be closed.

10. Under this circumstance repair and restoration of the building has to be done, as early as possible, to prevent further decay by using modern technology of "reinforced cement concrete."

11. No objection had been taken to the said report. It is, therefore, evident that it is not possible to accede to the petitioner's contention, in absence of the building having been declared to be a heritage building to make renovation in the same manner as was suggested by the Superintending Engineer, Archaeological Survey of India, Calcutta circle as contained In annexure "F" to the writ application.

This writ application is, therefore, disposed of by directing the respondents to carry out the renovation work keeping in view the suggestions made by the Independent Architect as referred to hereinbefore.

M.H.S Ansari, J.--I agree.

12. Application disposed of