

BM/
AC

W.P.A.. 7743 of 2020

Subir Chander

-vs-

Andaman & Nicobar Admn. & Ors.

Mr. Deep C. Kabir,

Mr. S. Ajith Prasad.

... For the Petitioner.

Leave is granted to move the matter unlisted.

This is an application under Article 226 of the Constitution of India wherein the petitioner is aggrieved by an order dated 25th September, 2020 passed by the Deputy Commissioner, South Andaman District.

By virtue of this order, the Deputy Commissioner being the respondent no. 2 has directed the respondent no. 3, Ferrargunj Tehasildar, to demolish the offending portion of the property-in-question and realise the cost for such demolition and removal of the debris from the petitioner.

Mr. Kabir, counsel appearing on behalf of the petitioner, submits that by notice dated September 24, 2020 was received by the petitioner on 25th September, 2020 at 10.00 a.m. wherein a hearing had been fixed at 4.00 p.m. on 25th September, 2020. When the petitioner went to the office of the Deputy Commissioner and sought time by way of an application being annexure 'P-8' at page 51 to this writ petition, the said application was rejected and an order has been passed which is the impugned order in question in this writ petition.

Mr. Kabir, counsel for the petitioner, relies on Rule 165(1)(b) of the Andaman & Nicobar Island Land Revenue and Land Reforms Rules, 1968 (hereinafter referred to as "the Rules") to indicate that after a notice is given in writing, the Deputy Commissioner is required to grant a hearing and thereafter if necessary, direct the petitioner to carry out self demolition of any unauthorized construction within a period of 15 days from the date of issuance of the order. In the event such demolition is not carried out by the petitioner, Rule 165(1) (d) comes into play. He submits that instead of proceeding as per the Rules, the Deputy Commissioner has straight way relied on Rule 165(1)(d) to direct demolition by the Tehsildar.

Mr. Kabir submits that this action is in complete violation of the Rules and the nature and haste in which the demolition has been order clearly depicts the fact that the action is mala fide. He, further, submits that this entire action is based on a political fight that is going on between the various parties.

Petitioner has sought leave under Rule 26 of the Appellate Side Rules for seeking an ad-interim order without service upon the other side.

Such leave is considered and granted.

Upon perusal of the writ petition and averments and annexures attached to this writ petition, it is clear that a prima-facie case has been made out for an ad-interim order of injunction with regard to the impugned notice dated September 25, 2020.

On a bare reading of the petition, it is clear that the Deputy Commissioner has not complied with the Rules as indicated above and straightway proceeded to, without giving any opportunity of hearing, direct demolition of the impugned structure. This action seems to be prima facie arbitrary and without any basis in law. In the event an ad interim order is

not passed in favour of the writ petitioner, the writ petition would become infructuous and great harm and prejudice would be caused to the petitioner. The balance of convenience lies clearly in favour of passing an ad interim injunction in favour of the petitioner.

In the light of the above observations and reasoning, the operation of the order no. 1067 dated September 25, 2020 is stayed and the respondent nos. 2 & 3 are directed not to take any steps in furtherance of the same.

This order is made returnable on Wednesday, i.e. 30th September, 2020, before the appropriate Bench.

The petitioner is directed to communicate this order to the respondents immediately and the authorities concerned are directed to comply with the advocate's letter containing the gist of the order passed in Court today.

(Shekhar B. Saraf, J.)