

02.12.2021
Court No. 19
Item no.27
CP

WPA 12245 of 2021

Sri Ashok Samanta
Vs.
The State of West Bengal & ors.

Mr. Tanmoy Mukherjee
MR. Kamal Mishra
Mr. T. T. Panda
Mr. A. Basu

.....for the petitioner.

Mr. Subrata Ghosh
Mr. Benazir Ahmed

....for the State.

Mr. Mihir Kundu

...for the respondents 10 & 11.

Mr. Sanjay Saha

...for the respondent no. 12.

The writ petition has been filed alleging that the panchayat authorities issued the order dated June 23, 2021 in total non-application of mind and without considering the allegations giving rise to the said proceeding. It is submitted that the specific allegation of the petitioner before the panchayat authorities was that the respondent no. 12 did not have a valid sanction plan for making the alleged construction.

Reliance has been placed on an information received by the petitioner under the Right to Information Act. Pursuant to such information received under the Right to Information Act, the petitioner challenged the inaction on the part of the panchayat authorities with regard to the alleged construction and filed a writ petition. The said writ petition was disposed of by an order dated February 9, 2021 in WPA 10917 of 2020. The court directed the panchayat authorities to dispose of the complaint of the petitioner with regard to allegation of construction without a plan. Accordingly, a proceeding was initiated by the panchayat authorities and a reasoned order has been passed. This reasoned order has been challenged by the petitioner.

The allegations are that the order did not take into account the primary objection of the petitioner. That the entire building constructed by the respondent no. 12 was done without a valid sanction plan. The authority only directed demolition of the cantilever which was found to be unauthorized but the order is silent on the question of grant of sanction in respect of the entire construction.

It is prayed that the order be set aside and the matter be relegated to the Pradhan, Bibhisampur Gram Panchayat for a fresh hearing on all the issues.

Mr. Kundu, learned advocate appearing for the panchayat authorities, submits that the panchayat authorities have considered and disposed of the issues raised by the petitioner in accordance with law and the RTI information cannot be given much weightage.

Mr. Saha, learned advocate appearing on behalf of the respondent no.12, submits that the respondent no. 12 has a valid sanction plan. That the sanction plan had expired and the same was subsequently revalidated. The construction was made strictly in accordance with the plan.

It is true that there was a information given to the petitioner under the Right to Information Act to the effect that there was no sanction in respect of the construction in question. This aspect has not been gone into by the panchayat authorities. However, the findings of the gram panchayat is to be referred to the Sub-Divisional Officer concerned for final decision with regard to the demolition and imposition of fine under Section 23(5) of the West Bengal Panchayat Act, 1973.

Under such circumstances, the writ petition is disposed of with a direction upon the panchayat authorities to proceed in terms of Section 23(5) of the West Bengal Panchayat Act, 1973 by referring the entire proceeding to the Sub-Divisional Officer

concerned. The Sub-Divisional Officer upon hearing both the parties will take a final decisions in terms of the provisions of law and while doing so, the question of existence of a valid sanction plan shall also be gone into. Accordingly a reasoned order shall be passed and communicated to the parties. Thereafter, steps shall be taken as per the statute.

The panchayat authorities shall refer the matter to the concerned Sub-Divisional Officer with all its findings and records of the proceeding within two weeks from date and, thereafter, the Sub-Divisional Officer shall decide and dispose of the entire issue within six weeks thereafter.

All steps shall be taken in accordance with law and completed within the aforementioned period. In the proceeding before the Sub-Divisional Officer, the parties shall be entitled to produce all the documents in support of their contentions.

The writ petition is, thus, disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)