

17.11.2021
Sl. No.26
srm

W.P.A. No. 17453 of 2021
Gopal Maity & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Jayanta Narayan Chatterjee,
Mr. Debashis Banerjee,
Mr. Supreem Naskar
...for the Petitioners.

Mr. Santanu Kumar Mitra,
Mr. Ranjan Saha
...for the State-respondents.

Mr. Uttam Kumar Bhattacharya
...for the Respondent Nos.3 & 4.

Mr. B.K. Samanta
...for the Respondent No.6.

The petitioners have alleged that the Additional Executive Officer, Purba Medinipur Zilla Parishad, that is the respondent No.4, did not have the jurisdiction under the law to direct a party to demolish an unauthorised construction.

Mr. Bhattacharya, learned Advocate for the Purba Medinipur Zilla Parishad and Mr. Mitra, learned Advocate for the State-respondents, submit that the order was passed by the said authority pursuant to a direction of this Court. They submit that the petitioners did not raise any objection either before this Court or before the respondent No.4 when the matter was being disposed of.

Mr. Samanta, learned Advocate appearing on behalf of the respondent No.6/complainant, submits that the petitioner did not take any permission from the Zilla Parishad for construction of the building above 6.5 metres.

This Court had directed the respondent No.4 to take a decision on the complaint of the unauthorised construction by the petitioners. The respondent No.4 is the authority to grant sanction for construction as the height of the building is above 6.5 metres. Thus, this Court had directed the respondent No.4 to hear out the matter and reach the same to its logical conclusion in accordance with law. Accordingly, the respondent No.4 heard the parties and came to the conclusion that there has been an unauthorised construction.

Here, the question is whether the respondent No.4 could himself directed demolition under Section 23(6) of the West Bengal Panchayat Act. Section 23(5) provides that when any new structure or new building or any addition or any alteration of structure or building is made in contravention to the provisions of Section 23 sub-section (1), the permission granting authority shall refer the matter to the Sub-Divisional Officer concerned, who after giving the owner an opportunity of being heard, make an order directing demolition of the building or a portion of the building which is unauthorised.

In my opinion, the permission granting authority has already investigated into the matter as per the direction of this Court and has found unauthorised construction. The next steps would be to refer the matter to the Sub-Divisional Officer concerned and the Sub-Divisional Officer shall act and proceed in accordance with law under Section 23(5) of the said Act.

The writ petition is disposed of granting liberty to the respondent No.4 to forward the order passed at the hearing, which has been impugned to the writ petition. The respondent No.2, that is the Sub-Divisional Officer, Tamluk Sub-Division, Purba Medinipur shall act on the basis of the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

The entire exercise shall be completed within a period of six weeks from the date of communication of this order.

It is made clear that there is no interference with the decision of the respondent No.4.

This writ petition is, thus, disposed of.

There will be, however, no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)