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**Calcutta High Court
In the Circuit Bench at Jalpaiguri**

WPA 8 of 2021

**Indian Institute of Legal Studies
-versus
State of West Bengal & Ors.**

**Mr. Joyjit Choudhury
Mr. Rohit Agarwal
Mr. Ajay Singhal**

...For the Petitioner.

**Mr. Subir Kumar Saha
Mr. Momenur Rahman**

...For the State.

The present writ petition has been filed against an order dated 24th March, 2020 passed by the Matigara Panchayat Samiti by which the application of the petitioner, for approval of a plan for installation of a lift, in the Petitioner College, was rejected.

The petitioner is a college located at Siliguri imparting legal education. The petitioner commenced its academic session sometime in 2010 in a building constructed in a land sanctioned by the Siliguri-Jalpaiguri Development Authority (the 'said Authority') constituted under The West Bengal Town and Country (Planning and Development) Act, 1979 (the '1979 Act'). The case of the petitioner is that at the time of sanction of the relevant plan for construction of the building, the said Authority was the nodal agency for

according sanction to plans for buildings within its jurisdiction. The petitioner complied with all formalities including payment and development charges etc. for construction of the building and commenced its academic sessions thereafter.

Learned Counsel appearing for the petitioner places a “Land Use Compatibility Certificate’ dated 6th November, 2008 issued by the said Authority to the Trust governing the petitioner stating that the change of use of land from ‘Residential’ to ‘Law College (Educational)’ purpose has been found to be compatible to the predominant land use and as per the land use map prepared and published by the Authority under Section 29(1) of the 1979 Act. Counsel also places Section 2(5) of the 1979 Act which defines “commerce” as the carrying on of any trade, business, profession, sale or exchange of goods etc. and includes the running of, with a view to making profit, hospitals, nursing homes, infirmaries, educational institutions, hotels, restaurants etc. Counsel further places Section 4C of the West Bengal Land Reforms Act, 1955 (the ‘1955 Act’) which provides for permission for change of area, character or use of land and sub-section 2 thereof for the conversion of use of land. Section 2(7) of the said Act is shown for the definition of ‘land’ which includes, among other descriptions, tank-fishery, homestead, benefits arising out of land and

things attached to the earth or permanently fastened to anything attached to the earth. Counsel places the West Bengal Panchayat (Panchayat Samity Administration) Rules, 2008 and particularly Rules 65 and 74 thereof which provide for permission for construction of building or structure and the manner of processing applications. Counsel places particular emphasis on Rule 75 which specifies the right of an applicant if the permission or refusal of the Authority is not communicated within a specified time limit. Counsel prays that the impugned order dated 24th March, 2020 passed by the Executive Officer, Matigara Panchayat Samity, Darjeeling be quashed and set aside.

Learned counsel appearing for the State respondents objects to the contentions made on behalf of the petitioner by submitting that the Authority which granted permission under the 1979 Act is not the proper Authority for certifying change of land use. Counsel submits that the petitioner could not have proceeded to construct a building for commercial purposes without the proper documentation for conversion of land and that the compatibility certificate is not in consonance with the requirement of Section 4C of the 1955 Act.

On hearing learned counsel for the parties and upon perusing the relevant documents, it may be useful to

note a few of the facts, in brief. It should be mentioned that certain documents were handed up in court today, copies of which were also made over to counsel representing the State respondents. Since both parties were apprised of the documents, the facts which are to follow refer to the said documents.

The petitioner made an application for conversion of land from the schedule of land (Danga & Rupni) to non-agricultural land for setting up a College. On 2nd December, 2008 the said Authority issued a certificate by which permission was granted for change of use of the land from 'Residential' to '(Commercial) Law College. By an order dated 4th December, 2008 issued by the Development Authority, the petitioner was communicated that '*Jalpaiguri Development Authority hereby grants permission as proposed/grants permission subject to the conditions stated below*'. In the Note mentioned in the communication, the above sanction was made subject to payment of a Development Charge as assessed by the Development Authority. It is not the case of any of the parties that the Development Charge or any of the other conditions mentioned in the order of 4th December, 2008 have not been complied with by the petitioner. In February, 2009, conversion of land was granted by the B.L. & L.R.O., Darjeeling from 'Danga & Rupni' to 'Bastu'. There are several documents annexed to the writ

petition which show that the Development Authority as well as the concerned Gram Panchayat Office certified the compatibility of the change of use of land as proposed for the purposes of construction of a law college as also approving the sanctioned plan for completion of such building as competent for use pursuant to an inspection carried out by the deputed engineer of the Panchayat office. Section 13 of the 1979 Act which sets out the powers and functions of a Planning and Development Authority provides in 13(ii)(d) the power to prescribe the use of land within its area. Sections 28 and 29 provides for preparation of land-use map and notice of such for the purposes of publishing a public notice by the Development Authority. The latter section has been referred to in the certificate dated 6th November, 2008. Notably, by the order dated 4th December, 2008 the Development Authority granted permission for the construction of the law college and the certificate of 2nd December, 2008 allowed the use of land from Residential to (Commercial) Law College.

The West Bengal Panchayat Rules, 2008 provides under Rule 65 that any person intending to erect a new structure or building or to make any addition to any existing structure pertaining to the area of any Development Authority shall make an application in the form prescribed and deliver it to the authorized

person under the Rules. Rule 74 indicates the manner of processing applications and specifies that on presentation of an application under Rule 65, the Executive Officer/any other competent officer shall examine the right and title of the applicant and after making enquiry shall within a period of 30 days from the date of receipt of the application place it before the Panchayat Samity for granting/refusing permission for the construction applied for. Rule 75 provides that if permission or refusal under Rule 74(1) to (3) is not communicated by the Panchayat Samity within the prescribed time limit, it shall be presumed that the Panchayat Samity has accorded such permission and it shall be lawful for the applicant to erect any structure as furnished with the application. The prescribed time limit can be found in the second proviso to Rule 74(2) and provides that all formalities including vetting etc. pursuant to an application being forwarded by the Zilla Parishad to the department of Panchayats and Rural Development shall be completed within '60 days' from the date of receipt of the application at the Panchayat Samity. The application made by the petitioner in this regard was received by the Panchayat Samity on 16th December, 2019 which would be evident from the tracking report annexed to the writ petition.

If the second proviso to Rule 74(2) is to be relied on, the time for the Authority to either accept or refuse the application of the petitioner expired 60 days from 16th December, 2019, i.e. on 15th February, 2020. At this juncture, it should be mentioned that a letter dated 11th March, 2020 from the Panchayat Samity to the Managing Trustee of the petitioner mentions that the Samity had sent a communication dated 4th February, 2020 with regard to conversion of land from 'Bastu' to college. This statement, however, has been categorically denied in a letter written by the petitioner's lawyer on 17th March, 2020 to the Samity wherein it has been stated that no such letter has been received by the petitioner.

Under Rule 75, since the Samity failed to revert to the petitioner, the petitioner was at liberty to proceed with the construction. It must be mentioned at this juncture that the construction contemplated is the construction of a elevator in the law college pursuant to the requirement stated in orders of the Supreme Court dated 15th December, 2017 and 25th July, 2018 for convenient movement of physically challenged persons. Such requirement is now also incorporated in several recent Rules for construction of building and are further required for accreditation of educational institutions.

The impugned order of the Samity which rejected the application of the petitioner forms the subject matter of the present challenge. The reason given by the Samity for rejecting the application of the petitioner should be set out for a proper understanding of the basis of the said order:

“Under the present circumstances, considering all aspects of the matter in terms of the Rule 74 of the West Bengal Panchayat (Panchayat Samiti Administration) Rules, 2008, since no further communication has been made from the side of the petitioner in case of submission of the documents related to conversion of land till 23.03.2020, the application for approval of revised plan for installation of the lift as submitted by the petitioner cannot be approved due to lack of the mandatory documents related to the conversion of the land from ‘Bastu’ to ‘College’.”

The relevant part of the order shows that the ground for rejecting the petitioner’s application was that the petitioner failed to submit documents relating to conversion of land from ‘Bastu’ to college. As opposed to the submissions made on behalf of the State Authorities, there is no ground mentioned with regard to either the provisions of the Land Reforms Act of 1955 or the Development Authority not being empowered to grant a compatibility certificate which it did on 6th November, 2008. The demand for documents showing conversion of land from ‘Bastu’ to college is clearly a case of non-application of mind in the face of the certificate dated 2nd December, 2008 by

which the change of use of land from residential to law college was allowed by the Authority and the order of 4th December, 2008 by which the Development Authority granted permission to the Trust of the petitioner for construction of the Law College.

The contention on behalf of the State that the conversion has not been done under Section 4C of the 1955 Act has to be seen as being made from the Bar as no such ground is indicated in the impugned order. Second, reliance on Rule 74 of the Panchayat Samity Rules by the Executive Officer is entirely misplaced. Rule 74 does not concern change of use of land and does not mention any requirement for submission of documents in respect of conversion of land. Attempting to justify the impugned order under one statute as opposed to another is an instance of one arm of the State being unaware of what the other arm is doing. The petitioner cannot be victimized for the lack of co-ordination between the different statutory arms/bodies of the State.

For the reasons as stated above, the impugned order dated 24th March, 2020 is found to be bereft of any reasons either in fact or in law for rejecting the application for approval as submitted by the petitioner. The impugned order is hence set aside.

WPA 8 of 2021 is, accordingly, allowed in terms of prayer (a).

The concerned authorities are directed not to take any steps which are contrary to the existing law pertaining to the approval of the petitioner's application for sanction of the revised plan, including the Panchayat Rules, 2008 which have been discussed above.

There will be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on the usual undertaking.

(Moushumi Bhattacharya, J.)