

07.03.2022
Item No.02
Court No.6.
S. De

F.M.A. 507 of 2021
I.A. No. CAN 1 of 2021
Syed Ruhul Amin.

Vs

The State of West Bengal & Ors.

Mr. Jaharlal Ray,
Ms. Kavita Rani, ...for the appellant.
Mr. Golam Mastafa,
Mr. Tarasankar Samanta,
...for the respondent no.5.
Mr. Salil Kr. Maiti,
Mr. Pinki Saha,
...for the respondent nos.7 to 9.
Mr. Amit Prakash Lahiri,
Mr. S.P. Lahiri, ...for the State.

This appeal is directed against an order dated January 7, 2020 whereby W.P. 19024(W) of 2019 was dismissed.

The private respondent nos. 7 to 9 in the present writ petition had approached this Court earlier by filing W.P. No.13344(W) of 2018 contending that the present writ petitioner who was a private respondent in the earlier writ petition had made illegal construction. The learned Single Judge by an order dated January 10, 2019 referred the grievance of the writ petitioner in that writ petition to the S.D.O., Sutahata-I with a direction on him to consider all records, hear all the parties and take consequential steps apropos his reasoned decision.

Pursuant to such order, the concerned S.D.O. has passed an order on August 14, 2019 holding that the present writ petitioner/appellant has indeed made illegal construction and directing demolition of such construction. This order of the S.D.O. was challenged by the appellant before the learned Single Judge by filing W.P. No.19024(W) of 2019.

Before the learned Single Judge the only point urged by the appellant was that the S.D.O. did not have the authority to consider the issue of illegal construction since the construction was of the year 2011 and the amendment to Section 23 of the West Bengal Panchayat Act, 1973, which gives authority to the S.D.O. to consider such an issue was effected in the year 2017. This contention of the appellant was negated by the learned Single Judge, and in our view rightly so. On a reading of Section 23(6) of 1973 Act, we are of the view that the S.D.O. had authority to consider the issue that had been referred to him by this Court in the earlier writ petition.

Further, it has been drawn to our attention by learned advocate appearing for the private respondents that the writ petitioner/appellant had approached the Additional Executive Officer, Purba Medinipur Zilla Parishad with a prayer for sanction of a plan for making additional construction. The Zilla Parishad by its order dated September 29, 2021 rejected the

application. Further, the Zilla Parishad upheld the order of the S.D.O. The Zilla Parishad found that sanction of the plan on the basis of which the writ petitioner had made the original construction, was also obtained by practicing fraud. Permission of building plan sanctioned vide order dated January 22, 2020 was cancelled and the order of the S.D.O. was upheld. The Officer-in-Charge, Sutahata Police Station, Purba Medinipur was directed to be informed to take penal action under Section 182 of the Indian Penal Code for submission of false affidavit dishonestly to the authority concerned by the writ petitioner.

In view of the aforesaid, we are of the opinion that there is no merit in the appeal. The appellant has also suppressed before this Court the aforesaid order of the Zilla Parishad. We were inclined to impose exemplary costs. However, we have been dissuaded from doing so by the eloquence of learned advocate appearing for the appellant. This appeal is dismissed with the contempt that it deserves.

F.M.A. 507 of 2021 is, accordingly, dismissed along with the application being IA No.CAN/1/2021.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)