

15.09.2022
Sl. No.7(DL)
srm

W.P.A. No. 2591 of 2020

Based Halder & Ors.

Vs.

The State of West Bengal & ors.

Mr. Pinaki Ranjan Mitra

....for the Petitioners.

Mr. Arindam Chattopadhyay,

Ms. Lipika Chatterjee

...for the State-respondents.

Ms. Monjuli Chowdhury,

Ms. Mekhla Sinha

...for the Respondent Nos.2 to 4/
Howrah Zilla Parishad.

Mr. Shuvro Prakash Lahiri,

Sk. Nizamuddin,

Ms. Barnali Gupta,

Mr. Rajesh Naskar

...for the Respondent No.5.

Mr. Amiya Kumra Chaudhuri

...for the Respondent Nos.7 & 8.

Affidavit-of-service is taken on record.

The writ petitioners have challenged an order passed by the Pradhan of Mohiary Gram Panchayat No.1, District-Howrah dated January 2, 2020, *inter alia*, indicating that the respondent No.5 had been constructing on the basis of a sanction plan. According to the petitioners, such finding was completely contradictory to the observation of this Court in the order dated December 2, 2019 passed in

WP 16126(W) of 2018 with WPCRC 275(W) of 2019, where His Lordship had recorded the submission of the panchayat authorities that the records did not indicate that there was a plan which entitled the respondent No.5 to effect the construction over his property. According to the petitioners, the Pradhan also did not have any jurisdiction to pass such an order. The order was passed contrary to law, contrary to records and for extraneous reasons.

The contempt proceedings arose out of an order passed by a learned co-ordinate Bench of this Court dated January 7, 2019. By the said order, the Mohiary Gram Panchayat No.1 was directed to enter into the question whether the construction raised by the private respondent over the property in question, had been done with permission or not. It was further directed that the Mohiary Gram Panchayat No.1 must take steps in accordance with the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act) and demolish the structure or to take other steps available, in case the construction was found to be unauthorized. It was further directed that the parties shall be heard by the Mohiary Gram Panchayat No.1.

According to Mr. Mitra, learned Advocate appearing on behalf of the petitioners, the Howrah Zilla Parishad was the sanctioning authority and as such all

steps that were required to be taken as per law, would be taken by the Howrah Zilla Parishad.

Reference is also made to the bye-laws of 2005 issued by the Howrah Zilla Parishad. Such bye-laws were published in exercise of power conferred under Section 223 of the said Act. It appears that the area in which the construction had been made is a notified area under the Kolkata Metropolitan Development Authority and falls within the jurisdiction of the Howrah Zilla Parishad.

Mr. Mitra further submits that on the basis of the Rule 28 of the West Bengal (Gram Panchayat Administration) Rules, 2004 (hereinafter referred to as the said Rules), and Section 160A of the said Act, the competent authority would be the zilla parishad both in respect of granting sanction and in demolishing an unauthorized construction.

Chapter IV of the bye-laws deals with general procedure for sanction of building plan. The District Engineer of the Howrah Zilla Parishad has been empowered to take action in case of unauthorized construction or in respect of constructions without any sanction from the zilla parishad. Under such circumstances, it is submitted by the petitioners that the Pradhan could not have passed the order impugned.

Mr. Lahiri, learned Advocate appearing on behalf of the respondent No.5, submits that the Pradhan had been acted on the direction of the learned co-ordinate Bench and as such judicial discipline would preclude this Court from entering into the question of jurisdiction of the Pradhan, and her authority to pass the order impugned. He further submits that Section 23(5) of the said Act provides that even if there is no sanction, the panchayat authorities ought to take steps by referring the entire issue to the Sub-Divisional Officer.

Learned Advocate for the Pradhan is unable to clarify the dual stand taken by the Pradhan before the two Courts having co-ordinate jurisdiction. In the contempt proceedings, the same Pradhan submitted that there was no record that any permission/sanction had been granted in favour of the respondent No.5. On the other hand, learned Advocate submits that there is some confusion in this regard, but he is unable to clarify the reason as to why the Pradhan took a completely different stand and passed the order impugned, *inter alia*, holding that the respondent No.5 had been constructing in accordance with the plan. Learned Advocate is unable to produce the plan and submits that the same could not be located in the office of the gram panchayat.

Learned Advocate for the State-respondents submits that the entire proceeding and the manner in which the same was conducted by the panchayat authorities smacks of *mala fide*. He also submits that the Pradhan had acted without jurisdiction.

The issue as to whether the Pradhan had acted without jurisdiction is not relevant as this Court had directed the Pradhan to take steps. The Pradhan came to a finding that the construction was in accordance with a plan. A different stand was taken earlier, before another Court. The learned Advocate for the Pradhan is unable to defend the order impugned before this Court, either by producing the sanction or by showing relevant documents, which would indicate that there was a sanction/permission.

The contention of the Pradhan is contrary to the records available. The learned Advocate for the Pradhan has specifically submitted that the records of the panchayat did not have any document of sanction. The Pradhan is also not in a position to explain why a contrary stand was taken before the learned co-ordinate Bench in the contempt proceedings indicating that there was no sanction in respect of the construction of the respondent No.5 in the records.

His Lordship had directed the concerned gram panchayat should take steps for demolition or otherwise if it is found that the respondent No.5 was constructing without any sanction.

The Pradhan enquired as per the direction of His Lordship and came to a finding. Once the Pradhan has come to a finding that there is a plan, the order passed by His Lordship has been complied with and the earlier proceedings have attained a finality.

The question which now arises is whether the finding is correct or not. Such finding has been challenged before this Court. This Court has already held for the above reasons, that the findings by the Pradhan could not be backed by reasons or supporting documents either by the respondent No.5 or by the panchayat authorities.

This Court has the jurisdiction to decide whether an allegedly unauthorized construction should be allowed to remain or not, by directing the appropriate authority to determine the issue. The merits need not go into by this Court.

The Howrah Zilla Parishad is the sanctioning authority as per the bye-laws of 2005 read with Rules 27 and 28 of the said Rules. The learned Advocate for the Howrah Zilla Parishad has categorically submitted before

this Court that there is no sanction in favour of the respondent No.5.

The order impugned is quashed and set aside.

Without going into the merits of the claim of the Howrah Zilla Parishad and without going into the allegation of the petitioners with regard to the alleged construction, this Court is of the view that the proceeding should be initiated in accordance with law by the Howrah Zilla Parishad to decide as to whether the respondent No.5 had constructed on the basis of an alleged sanction, which the Pradhan found to be existing in his favour. The alleged plan, if produced by the Pradhan or by the respondent shall be taken note of.

While doing so, the Howrah Zilla Parishad shall adhere to the following procedure:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of all interested parties, with 48 hours advance notice to the petitioners and all interested parties and also the respondent No.5.
- b) The report of the inspection shall be prepared along with the sketch map, indicating the extent of deviation, if any.

- c) Such report shall be handed over to the petitioners as also the interested parties.
- d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and is continuing, the authorities may take interim measures by stopping such construction.
- e) A hearing shall be given to the petitioners and all other interested parties including the respondent No.5 and the Pradhan of Mohiary Gram Panchayat No.1. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority. The Pradhan shall produce the plan, if any.
- f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion, in accordance with law.

The question of title, possession, encroachment, etc. shall not be decided by the Howrah Zilla Parishad.

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

The parties are directed to maintain *status quo* as per the direction of the learned civil court in respect of the concerned construction.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)