

Sl. No.11
22.06.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A 5513 of 2022

Falguni Mukherjee
Versus
The State of West Bengal & Ors.

Mr. Subhas Chandra Atha
Mr. Payal Paramani
Ms. Antara Panja ... for the petitioner

Mr. Lalit Mohan Mahata
Mr. Prasanta Behari Mahata
... for the State

Mr. Ananya Saha
... for the respondent no.8
Mr. Debnath Ganguly
... for the respondent no.10

The private respondent herein i.e. Jagannath Ganguly made a representation against the construction made by the writ petitioner, Falguni Mukherjee alleging unauthorised construction on the plot nos. 473/712, 473/713, 473/714, 472 and 475, mouza- Krishnanagar, J. L. No.179, P.O. Onda, District- Bankura.

The specific allegation of Jagannath Ganguly was that Falguni Mukherjee was making construction over plots of land not classified as 'Bastu' without obtaining any plan sanctioned by the Panchayet.

A writ petition was filed by the said Jagannath Ganguly before this Court being WPA 11714 of 2021

(Jagannath Ganguly vs. State of West Bengal & Ors.), impleading Falguni Mukherjee as respondent in the said writ petition.

The Court by order dated 28th March, 2021 disposed of the writ petition by giving opportunity to the petitioner to approach the Panchayat authorities in accordance with law on the allegation of unauthorised and/or illegal construction. The Court directed that if such application is made, the same shall be disposed of in accordance with law upon hearing the concerned authorities. Necessary inspection was also directed to be made and the parties were allowed to produce oral and documentary evidence in respect of their respect claims.

In compliance of the order passed by the Court the Pradhan of the Gram Panchayat considered the representation filed by the petitioner.

Notice of hearing was issued to all the parties. The Pradhan conducted an inspection. The revenue inspector, Land Surveyor, Nirman Sahayak, Secretary-in-Charge and the Executive Assistant of the Panchayat were also present.

The land where the disputed constructed was made was identified with the help of the Land Reforms Officer and other officers in the respective fields.

Falguni Mukherjee was present at the time of inspection and admitted that out of five plots only Plot

Nos.473/713 and 473/712 are 'bastu' plots and the other plots are 'tora' plots.

After identification of the plots, it was revealed that two storied pucca RCC construction was made over all the aforesaid five plots within the boundary wall which is under exclusive control of Falguni Mukherjee.

The land in question was measured in the presence of Falguni Mukherjee and in the presence of two learned advocates representing Falguni Mukherjee. It was admitted that Falguni Mukherjee possess the said area of land over which the two storied pucca RCC structure was constructed with brick built boundary wall, pucca garrage, cattle shed and courtyards. At the time of inspection Falguni Mukherjee failed to show any sanction plan issued by the competent authority or from the Panchayat for raising such construction.

Upon perusal of the records of the Panchayat, the Pradhan concluded that there was no plan sanctioned in favour of Falguni Mukherjee from the Panchayat for making construction over the aforesaid plots of land. A formal order was passed by the Pradhan of Medinipur Gram Panchayat on 3rd January, 2021 and the matter was forwarded to the Sub Divisional Officer, Bankura for taking further course of action.

After the matter was referred to the Sub Divisional Officer, Falguni Mukherjee made a prayer before the Pradhan of the Gram Panchayat for grant of

post facto approval of the construction made by her. The Pradhan of the Gram Panchayat by a communication dated 2nd March, 2022 replied to the application made by the petitioner for grant of post facto sanction/permission. It was clearly mentioned that under the provision of the West Bengal Panchayat Act there is no scope for granting post facto sanction. It was further clearly mentioned that granting post facto sanction was not possible.

The petitioner thereafter did not follow up the matter any further. The Sub Divisional Officer on receipt of the document from the Pradhan of the Gram Panchayat passed an order of demolition. Prior to passing order of demolition an opportunity of hearing was given to all the parties.

It appears from the order passed by the Sub Divisional Officer on 4th April, 2022 that in spite of giving repeated opportunity to the petitioner to appear in the hearing, only an application was made along with medical certificate praying for further time. On the first occasion, the hearing stood adjourned on the basis of the application filed by the petitioner but even on the second occasion there was no representation on the part of the petitioner.

The Sub Divisional Officer proceeded to decide the issue on the basis of available documents. The fact of application made by the petitioner for grant of post

facto sanction/permission of her existing building over LR Plot Nos.473/713 was also brought to the knowledge of the Sub Divisional Officer.

The Sub Divisional Officer came to a specific conclusion that the entire construction made by Smt. Falguni Mukherjee was without having any sanction/permission from the panchayat authority. It was also recorded that the construction was made without obtaining necessary permission for conversion of the classification of the land.

The Sub Divisional Officer invoked the provision of Section 23(5) of the West Bengal Panchayat (Amendment) Act, 2017 and directed the petitioner to demolish the two storied building constructed without written permission within eight weeks from the date of communication of this order.

The petitioner being aggrieved by the same has filed the present writ petition.

In spite of opportunity granted to the petitioner to produce the provision of law permitting post facto sanction/permission of a building already constructed without obtaining any permission, the petitioner has failed to come up with any such provision of law.

The petitioner has only relied upon a notification issued by the Land Reforms and R.R. & R Department dated 21st June, 2018 with regard to conversion of the plot of land under Section 4C of the West Bengal Land

Reforms Act, 1955. The said notification does not relate to post facto sanction of permission of construction made without obtaining any sanction from the competent authority.

Learned advocate for the petitioner boldly submits that his client is agreeable to pay fine for regularising the unauthorised construction that has been made by her.

Learned advocate representing the private respondent i.e. the complainant on whose complaint the issue of unauthorised construction was taken up for consideration by the Panchayat submits that, the petitioner is owner of only a portion of the land in question. It has been submitted that the land which is classified as 'Tora' is a cultivable land. The other co-owners of the said plot of land are not agreeable to the conversion of the classification of the said land.

The record of rights relied upon by the parties makes it evidently clear that out of the entire plot of land only a portion of the land has been purchased by the petitioner.

Learned advocate representing the Panchayat submits that no permission for making construction was sought for by the petitioner prior to making the said construction.

Learned advocate representing the State respondents submits that according to the provision of

law, no person is entitled to erect any new structure or building without obtaining previous permission in writing from the Gram Panchayat.

Prayer has been made by the respondents for implementing the order of demolition that has been passed.

Upon hearing the submissions made on behalf of all the parties, it appears that the provision of Section 23 of the West Bengal Panchayat Act, 1973 is very clear. It mentions that no person shall erect any new structure or new building having plinth area of not more than 150 sq. ft. and height not more than 6.5 meter in the area within the jurisdiction of a Gram Panchayat except with the previous permission in writing from the Gram Panchayat.

The expression “except with the previous permission in writing from the Gram Panchayat” implies that prior to making construction permission in writing ought to be obtained from the Gram Panchayat. There is no provision in the Act permitting post facto grant of permission of the construction already made. The same will amount to regularisation of unauthorised construction made by persons who take the risk to make construction without obtaining necessary permission from the Panchayat.

As there is no provision for grant of post facto sanction there is hardly any scope for regularisation of

the unauthorised construction that has been made by the petitioner.

The fact that the petitioner applied for grant of post facto sanction implies that prior sanction was not obtained before making the construction. The petitioner also failed to obtain necessary permission to convert the classification of the land upon which the construction has been raised. Though it has been submitted that the construction has been made over a Bastu plot of land, but admittedly, the fact finding authority i.e. the Panchayat, the Revenue Inspector, the Block Land and Land Reforms Officer, Nirman Sahayak of the Panchayat all were of the opinion that the construction was made over land, classification of which was not Bastu.

The learned advocate for the petitioner harps upon the impugned order by submitting that the same was an ex parte one. It appears from the order dated 10th March, 2022 passed by the Sub Divisional Officer that the petitioner did not appear on the date fixed for hearing but submitted a letter along with a medical certificate and the written argument. The complainant as well as the government representatives including the Pradhan of the Panchayat was present in the hearing. The petitioner sought time for three months on medical ground. The Sub Divisional Officer considered the prayer of the petitioner and adjourned the hearing for a

month with direction to remain present on 11th April, 2022.

The Sub Divisional Officer directed the BL&LRO to make arrangement for another field enquiry with prior intimation to all concerned and to prepare a specific report recording the status, possession, encroachment, nature of structure with area and plot number along with the sketch map. The representative of the Block Developmental Officer and the Pradhan of the Panchayat were directed to assist the Enquiry Officer of the BL&LRO during the field enquiry. Necessary police protection was also arranged.

On 11th April, 2022 neither the petitioner nor her representative appeared but only a copy of the communication by the learned advocate intimating filing of the present writ petition was submitted in the receiving section of the office of the Sub Divisional Officer with a prayer for giving further effect to the direction passed by the Sub Divisional Officer on 10th March, 2022. As the Sub Divisional Officer was acting in compliance of the direction passed by the Court on 28th March, 2021 in the earlier writ petition filed by the private respondent being WPA 11714 of 2021 accordingly the Sub Divisional Officer thought it fit to conclude the proceeding.

From the conduct of the writ petitioner it does not appear that the order passed by the Sub Divisional

Officer was an ex parte one. The petitioner deliberately remained absent in the hearing on the plea that the present writ petition was pending consideration before this Court. Admittedly, there was no order staying conclusion of the proceeding pending before the Sub Divisional Officer.

The Court has been made aware of the fact that a First Information Report has been lodged against the petitioner and charge sheet has been filed as the land in question was used for making construction without obtaining the necessary permission for conversion from the competent authority.

In present day there is a growing tendency to flout the law. Mindset of the public is developing that anything and everything is possible by spending money and by greasing the palms of the persons who are in power. The petitioner mustered the guts to make construction of two storied pucca construction, photograph of which has been produced in Court, without the minimum permission from the competent authority. In fact, permission to make construction was never sought for. The petitioner was absolutely confident that somehow or the other the construction raised will be regularized in a circuitous manner by paying money on the garb of fine.

If the prayer of the petitioner for post facto sanction is allowed, nobody will care for the law and

apply for obtaining sanction prior to making construction. The said idea is to be nipped in the bud otherwise the rule of law cannot be applied. There ought not to be different set of rules/law for different people. When a law is there in place the same is bound to be followed.

The writ Court ought not to overlook the evidence or to reappreciate the evidence relied upon by the fact finding authority to come to the conclusion that the construction has been made on agricultural land without obtaining the permission to construct and without converting the classification of the land, more so because the petitioner in no uncertain terms have admitted that the construction was made without sanction and accordingly applied for post facto sanction.

Any interference with the order of demolition will lower the morale of the officers who resisted the temptation to regularize the illegal and unauthorized construction by accepting money from the petitioner. The authority ought to be encouraged for sticking to the law and it is expected that they should continue to keep strict vigil so that the violators of law are suitably dealt with.

The Court is of the considered opinion that the order of demolition does not require any interference.

In view of the above, the Sub Divisional Officer is directed to take necessary steps for implementing the order of demolition that has been passed. The work of demolition shall be concluded at the earliest, but positively within a period of eight weeks from the date of communication of this order.

The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)