

AD. 27.
April 27, 2022.
MNS.

WPA No. 6211 of 2022

Giyasuddin Sardar and others
Vs.
The State of West Bengal and others

Mr. Shambhunath Ray,
Mr. Mohini Mohan Bhattacharya,
Md. Jalauddin,
Mrs. Amrita Tewari
...for the petitioners.

Ms. Shraboni Sarkar,
Ms. Sujata Ghosh
...for the State.

Ms. Monjuli Chowdhury,
Ms. Mekhla Sinha
...for the Zilla Parishad.

Mr. R. I. Sardar
...for the respondent no. 6.

Affidavit-of-service filed in Court today be kept
on record.

The grievance of the petitioners is that, by the
impugned order dated April 1, 2022, the Prodhan of
Bankra-III Gram Panchyat, Bankra, Domjur, District-
Howrah directed demolition of the buildings, in which
the petitioners are residing, by overlooking the
certificate issued by the Prodhan himself on February
22, 2020, whereby it was stated that the said
buildings were extremely ancient and no new
construction work has been undertaken at the said
premises.

It is further submitted that the demolition order was passed primarily on the premises that the petitioners have failed to submit any sanction plan with regard to the constructed buildings and demolition of the said construction is therefore illegal, without ascertaining the actual, or at least approximate, age of the buildings. At the juncture when the buildings were constructed, it is contended that no sanction plan was required under the law at all.

Learned counsel appearing for the private respondent vehemently disputes such contentions and submits that constructions are fairly recent, having been raised about 10 to 15 years back. As such, it is contended that in the absence of any sanction plan, the constructions were rightly held to be illegal.

Despite service of notice, none appears for the Prodhan, although most of the other parties are represented through counsel.

A bare perusal of the speaking order dated April 1, 2022, which is impugned herein, indicates that there is no reflection in the same as regards any enquiry and/or inspection having been held in respect of the actual age of the properties, more so in the teeth of the certificate dated February 22, 2020 issued by the Prodhan himself. Such certificate indicates that the buildings are ancient, which is

evident from the findings of the Prodhan in the impugned order dated April 1, 2022.

Moreover, in the event the buildings were sufficiently ancient, the law would not mandate any prior sanction plan for making the said constructions. As such, the germane question involved in the matter was the age of the constructions, which were not ascertained at all by the Prodhan in any manner whatsoever.

As such, the order dated April 1, 2022 (Annexure P7 at page 24 of the writ petition) is vitiated by gross violation of natural justice and law.

In such view of the matter, WPA No. 6211 of 2022 is allowed, thereby setting aside the impugned order dated April 1, 2022 and directing the Prodhan, that is, the respondent no. 2 herein, to undertake an appropriate enquiry, by appointing specialists/experts for ascertaining the age of the constructions-in-question and thereafter to rehear the parties on the report of such experts regarding the age of the constructions and subsequently to consider the fate of the said structures vis-à-vis the Panchayat law afresh.

It is made clear that this Court has not rendered any finding on the actual age of the structures and it will be open to the Panchayat Prodhan to arrange an appropriate enquiry by appointing experts to come to a conclusion in such

regard. The respondent no. 2, it is made clear, shall give a proper opportunity of hearing/representation to the petitioners as well as the private respondent while deciding the said issue afresh.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)