

D/L
Item No. 27
25.01.2022
KOLE

**FMA 894 of 2021
With
IA No. CAN 2 of 2021**

**Purnima Dutta
-Vs.-
Bethuadahari JCM High School & Ors.**

*Mr. K. J. Tiwari,
Mr. P. Ghosh,*

...for the appellants.

*Mr. A. Chattopadhyay,
Mr. L. Chatterjee,*

...for the State.

Mr. G. Mitra,

...for the respondent no. 1.

By consent of the parties the appeal and the application are taken up for hearing together.

The appellant was the respondent no. 10 before the learned Single Judge.

The dispute between the writ petitioner-school and the appellant seems to be regarding construction of a hostel building by the school for housing students who attend the school from far away places. There have been several rounds of litigations between the parties. An order came to be passed by the Pradhan of the concerned Panchayat on December 28, 2018 directing the school to demolish certain constructions that the school had made. The school had challenged such order by way of a writ petition but subsequently withdrew the same since there were certain

defects. Again the school has filed the instant writ petition challenging the order dated December 28, 2018.

The school says that now the relevant Panchayat Samiti has granted post facto sanction to the construction made by the school. The said factum has also been recorded by the Block Development Officer, Nakashipara in his letter dated June 20, 2019 addressed to the teacher-in-charge of the school in question. The school says that since now the construction has been regularized, the Pradhan cannot insist on having his demolition order dated December 28, 2018 implemented.

The learned Single Judge noted that sanction has now been granted to the school for the construction in question. The learned Judge recorded the writ petitioner's submission that the construction is being made strictly in accordance with the sanctioned plan and disposed of the writ petition by permitting the writ petitioner to make the necessary construction strictly adhering to the plan sanctioned by the Panchayat Samiti. Being aggrieved, the respondent no. 10 has come up by way of this appeal.

The first point urged by the respondent no. 10-appellant is that no notice of the writ petition was served on her. We called for the records of the writ petition and we have perused the same including the affidavit of service. It appears that the writ petition was sought to be delivered to the respondent no. 10-appellant by the postman at least on three dates but each time the house of the respondent no. 10-appellant was found to be locked. We have granted full

opportunity to the appellant to place her case before us. The appellant says that the writ petition which now has been filed is not maintainable. The order of the Pradhan dated December 28, 2018, ordering demolition of the construction in question has become final. Such order cannot be assailed once again before this Court.

The appellant further says that the plan that has been sanctioned has not been so done by the competent authority. It is the Panchayat and not the Panchayat Samiti which has the authority to sanction the plan. This submission of the appellant is not correct. The law permits a Panchayat to operate through various Samities and Upa-Samities.

As regards the first point, the writ court can always mould the relief to be granted. The learned Single Judge rightly noticed that post facto sanction has been granted by the concerned Panchayat Samiti to the writ petitioner school and accordingly without going into the past history unnecessarily, has permitted the writ petitioner to make necessary construction adhering to the sanctioned plan.

In so far as the appellant's objection to the sanction plan is concerned, this is not the forum where such issue can be decided. The appellant has not challenged the sanctioned plan in an appropriate proceeding. We are not inclined to interfere with the order impugned. However, if the appellant is aggrieved by the building plan which has been sanctioned in favour of the writ petitioner-school, the appellant will be at liberty to challenge the same in accordance with law before the appropriate forum if she is entitled to do so in law.

The appeal, being no. FMA 894 of 2021 and the connected application, being no. CAN 2 of 2021 are accordingly disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)