

S/L 1
11.04.2022
Court. No. 19
GB

WPA 21082 of 2021
With
CAN 1 of 2022

Sri Koustab Roy
VS
The state of West Bengal & Ors.

*Mr. Sabyasachi Chatterjee,
Mr. Akashdeep Mukherjee,
Mr. Pintu Karar.*

...for the Petitioner.

*Mr. Lalit Mohan Mahata,
Mr. Supratim Dhar.*

...for the State.

*Mr. Jaydip Kar,
Mr. Siddhartha Ghosh.*

...for the Respondent No.5

*Ms. Pompey Bose,
Mr. Sourav Koley.*

...for the Respondent No.10.

Affidavits-of-service filed in Court today be kept with
the record.

The writ petition has been filed challenging an order
passed by the District Magistrate, Birbhum dated November
26, 2021 as also the order dated March 31, 2022 issued by
the Executive Officer, Sriniketan Shantiniketan Development
Authority (hereinafter referred to as 'SSDA'). The primary
challenges are as follows:-

- a) That the District Magistrate, Birbhum did not
demarcate the unauthorized portion directed to be
demolished. Similarly, the Executive Officer, SSDA
also did not demarcate the area to be demolished.

- b) In the absence of any identification of the nature and extent of unauthorized construction, the order of demolition could not be implemented.
- c) The panchayat authority had approved the building plan and granted sanction to the petitioner sometime in 2020.
- d) Without the sanction plan having been cancelled or set aside, the District Magistrate, Birbhum could not have directed demolition.
- e) That the permission granting authority under Section 23(5) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'Panchayat Act') had the power to direct demolition of such constructions, which were found to be in violation of the provisions of Section 23(1) of the Panchayat Act.
- f) That some constructions existed prior to 1988.

Ms. Bose, learned advocate appearing on behalf of the respondent no.10 submits that this Court had directed the District Magistrate, Birbhum to consider and dispose of the representations made by the respondent no.10 and to come to a specific finding in that regard. It was further directed that the report of the SSDA should also be considered by the District Magistrate at the time of disposal of the representation of the respondent no.10. Ms. Bose, learned advocate further submits that in the absence of any permission from the SSDA under Section 46 of the West Bengal Town and Country (Planning and Development) Act,

1979 (hereinafter referred to as the 'said Act'), the panchayat authority could not have granted such sanction/permission to construct. She further submits that once there is a finding of unauthorized construction, the building must be demolished by the Executive Officer of SSDA. It has been specifically submitted by Ms. Bose, learned advocate that the lease deed, by which the petitioner came in occupation of the property, did not mention that a two storeyed building existed on the premises. The two storeyed construction was a recent construction after the permission was granted illegally by the panchayat authorities.

Mr. Kar, learned senior advocate appearing on behalf of the respondent no.5 submits that the panchayat authorities did not have any authority under the law to issue the sanction plan in favour of the petitioner in view of the notification dated January 25, 2010 and the direction of the Hon'ble Division Bench of this Court in the matter of Jogen Chowdhury and others versus The State of West Bengal and others reported in (2013) 4 Cal LT 259. The said notification was directed to be implemented by this Court in the matter of Jogen Chowdhury (supra). The notification provided that with the object of preservation and conservation of historical, architectural constructions and for environmental and ecological purpose, the SSDA was to prepare a detailed development plan and carry out amendments in the previous plan as may be necessitated in terms of the provisions of the said Act. The notification further provided that the SSDA could take the help of experts to give a shape to the proposed

management plan. The schedule to the said notification specifically provided the areas, which were to be included or in respect of which the Land Use and Development Control Plan (LUDCP) would have to be amended and prepared. The said schedule includes Mouza Goalpara. The construction in this case falls within Mouza Goalpara.

Thus, according to Mr. Kar, in the absence of any permission under Section 46 of the said Act and in view of the directions of the Hon'ble Division Bench restraining any kind of construction till the LUDCP as per the notification of 2010 was prepared and approved, neither the panchayat authorities of Ruppur Gram Panchayat derived any authority to sanction the plan nor did the petitioner derive any right to make such construction.

Mr. Kar further submits that directions have also been issued by the Hon'ble Apex Court in the appeal pending from the order of the Hon'ble Division Bench in Jogen Chowdhury (supra). The LUDCP, which has been published pursuant to the 2010 notification as per the direction of this court, has been filed before the Hon'ble Apex Court. The SSDA could not grant and did not grant any approval or 'no objection' for the constructions within Mouza Goalpara. The panchayat authorities could not approve the sanction without any permission or 'no objection' from the SSDA and also due to the pending proceeding.

Heard the parties. The respondent no.10, being aggrieved by the construction of the petitioner approached

this Court complaining of the silence maintained by the permission granting authority and the State authority.

This Court had directed the District Magistrate, Birbhum to dispose of the representation of the respondent no.10. The report of the SSDA which was filed in court, was also directed to be taken into consideration. A hearing was initiated by the District Magistrate and all the parties were heard. The District Magistrate considered the deed of lease and the approved building plan of a two storeyed building granted to the petitioner. The Block Land and Land Reforms Officer had filed a report, indicating that the petitioner had constructed within the boundary line as per the lease deed. The Executive Officer of SSDA submitted before the District Magistrate that the petitioner had neither obtained any permission nor a 'no objection' from the SSDA as per the requirements of the said Act, to construct on the said land, after grant of the lease.

Thus, the constructions over the existing structures were found to be unauthorized and illegal by the District Magistrate and the Executive Officer, SSDA was directed to take steps for demolition of the portion beyond the site plan, area of the building.

The direction of the Hon'ble Division Bench reads as follows:

104. We are, therefore, of the opinion that since the development plan prepared by the Sriniketan-Santiniketan Development Authority was required to be modified in terms of the notification issued on January 25, 2010, no right can accrue to the respondent no. 6 therefrom so as to sustain a totally illegal and unauthorised act in raising a large scale multi storied construction in an ecologically and

culturally preserved area adjoining a wild life sanctuary and destroying 'khoai' land.

105. It is apparent that it was necessary to work out peripheral limits of buffer zone in and around Visva Bharati campus, which has not been done so far. It was also necessary to carry out changes in development plans mentioned in notification dated 25.04.2010 issued under the Act of 1979. We restrain any kind of construction till such exercise is done and the development plan is modified by the Sriniketan-Santiniketan Development Authority in terms of the notification dated January 25, 2010 in mouzas covered in it issued under the West Bengal Town & Country (Planing and Development) Act, 1979.

106. We find that objection raised from time to time remain unheeded to. Prompt action ought to have been taken by the District Magistrate and the Superintendent of Police against the Sriniketan-Santiniketan Development Authority and other concerned bodies not only to stop the construction in question but to demolish it as the same is totally illegal.

107. Resultantly, as the construction of the building is found to be wholly unauthorised and illegal for the reasons, as aforesaid, we direct demolition of the same. The District Magistrate, Birbhum and the Superintendent of Police, Birbhum as also the Bolpur-Srinikektan Panchayet Samity shall take action for demolishing the building within a period of one month from date and to file their compliance report before this court. We direct the authorities, as aforesaid, not only to demolish the building in question in totality but to restore the land, as it was, as far as possible and to keep it as such. They are also directed to ensure that no constructional activity in the area covered by notification on 25.1.2010 of Santiniketan and Visva Bharati to be undertaken till the development plan is modified in accordance with law in terms of the notification dated January 25, 2010 and without prior approval of the Apex Advisory Committee constituted in terms of notification dated January 18, 2011 and without consultation with the West Bengal Pollution Control Board. We further direct till consultation with the Archeological Survey of India is completed, no permission for raising any construction to be accorded in future by any authority, such as, Sriniketan-Santiniketan Development Authority, Bolpur-Srinikektan Panchayet and other local bodies, authorities such as municipality, etc. in Mouzas included in notification dated 25.1.2010 and in Visva Bharati/ Santiniketan.

Undoubtedly, the order of the District Magistrate reveals that some constructions were done pursuant to the

approval granted by the panchayat authorities. The order reads as follows:-

“Executive Officer, S.S.D.A. states in his report that the private respondent has not made any application in written to S.S.D.A. for permission for construction. From the report it is transpired that the portion of construction which was made after execution of lease deed without getting any permission from the SSDA. So construction over the existing building i.e. beyond site plan area mentioned in the documents attached with Lease Deed is hereby declared illegal and the Executive Officer, S.S.D.A. is directed to take all necessary steps for demolition of this portion i.e. beyond site plan area of this building.”

It is also a mandate of law that a permission under Section 46 has to be granted by the SSDA before any construction takes place within the areas under the SSDA. Section 55 of the said Act empowers the SSDA to order removal of some structures.

Moreover, the notification of 2010 which has been upheld by this Court, categorically provides that a LUDCP was required to be prepared in respect of certain mouzas including Mouza Goalpara.

In the case of Jogen Chowdhury (supra) the Hon’ble Division Bench had directed not only implementation of the notification of 2010, but had also directed that the building, which was the subject matter of the proceeding before the Hon’ble Division Bench should be demolished by the District Magistrate with the help of the Superintendent of Police. The Hon’ble Division Bench had further directed that no construction should be made before the LUDCP, was approved and/or was in place. The District Magistrate was also directed to ensure that no new construction took place.

The panchayat authorities/local bodies were restrained from granting any permission/sanction. It is informed that the order of the Hon'ble Division Bench had not been stayed by the Hon'ble Apex Court. An order of status quo has been passed. The Hon'ble Apex Court, which is in seisin of the civil appeal has also issued certain directions from time to time. The SSDA had been made answerable by this court with regard to the constructions which had been permitted in the said locality.

The portion of the order of the Division Bench of this court is again quoted for convenience:

“They are also directed to ensure that no constructional activity in the area covered by notification on 25.1.2010 of Santiniketan and Visva Bharati to be undertaken till the development plan is modified in accordance with law in terms of the notification dated January 25, 2010 and without prior approval of the Apex Advisory Committee constituted in terms of notification dated January 18, 2011 and without consultation with the West Bengal Pollution Control Board. We further direct till consultation with the Archeological Survey of India is completed, no permission for raising any construction to be accorded in future by any authority, such as, Sriniketan- Santiniketan Development Authority, Bolpur-Sriniketan Panchayet and other local bodies, authorities such as municipality, etc. in Mouzas included in notification dated 25.1.2010 and in Visva Bharati/ Santiniketan.”

It is also a fact that the LUDCP has been submitted before the Hon'ble Apex Court. The LUDCP has been published. The grant of final approval of the same shall be decided after the Hon'ble Apex Court takes into account the issues involved.

Thus, the construction on the basis of any approval or permission of the sanctioning authority (panchayat) after the

decision in Jogen Chowdhury (supra) is contrary to law. Firstly, in the absence of any permission from the SSDA such construction cannot stand. The construction has been made in the teeth of an order of injunction passed by the Hon'ble Division Bench of this Court. Any action taken in violation of an order of injunction is a nullity. Thus, the permission/approval/sanction granted by the Ruppur Gram Panchayat is a nullity. The constructions based on such approval are also illegal.

This Court is of the view that the panchayat authorities could not have granted any permission to construct. The approval of the site plan and grant of building sanction are set aside.

The order impugned, however, suffers from an apparent irregularity. There is no finding with regard to the extent of unauthorized construction, which has been made beyond the site plan over the existing structure. Such exercise ought to have been undertaken by the authority. Moreover, the permission granting authority being the panchayat authorities should have been allowed to participate in the process in order to detect the extent and nature of construction. In the order of the District Magistrate and the order of the Executive Officer, SSDA, there are clear findings that there has been unauthorized construction. Such point cannot be re-agitated. However, as the panchayat authorities under Section 23 of the Panchayat Act is the permission granting authority, the said authority must implement such finding in terms of Section 23(5) of the

Panchayat Act. For this exercise, the following procedure shall be adopted:-

Part-A

- i) The Executive Officer of SSDA and the competent authority of the Ruppur Gram Panchayat, shall cause an inspection in the presence of the petitioner as also the respondent no.10 to demarcate such portions, which have been constructed after the approval of the sanction plan by the panchayat authorities, and were detected to be irregular. Whether there were pre-existing structures, which still stand on the premises must also be indicated in the report.
- ii) A report and a demolition sketch map shall be jointly prepared by the Executive Officer, SSDA as also the representative of the Gram Panchayat and handed over to the parties, showing the portions to be demolished.
- iii) The parties may respond to such report and thereafter the matter shall be referred to the Sub-Divisional Officer by the Gram Panchayat for exercise of power under Section 23(5) of the Panchayat Act for demolition of the structures, which have been constructed on the basis of the sanction plan, which has been set aside by this Court.

If such demolition as per the report is not implemented by the petitioner, the authority shall proceed in accordance with law as per Section 23(5) of the Panchayat Act. A reasoned order shall be passed and communicated to the parties. Although, in Jogen Chowdhruy (supra), the Hon'ble Division Bench directed the District Magistrate to demolish the structure involved in the matter, yet any demolition has to be carried out in terms of Section 23(5) of the Panchayat Act, as the panchayat is the permission granting authority. The entire exercise shall be completed within two months from date.

The Executive Officer, SSDA shall not cause any demolition and such direction of the District Magistrate is set aside to that extent. Demolition can be effected as per Section 23(5) of the Panchayat Act. The other portions of the order are not interfered with.

Part-B

If upon inspection as directed, any part of the construction is found to be existing prior to the establishment of the SSDA, the panchayat authorities shall initiate further enquiry in terms of Section 23 of the Panchayat Act to ascertain whether such construction existed prior to constitution of the SSDA and whether such construction was in accordance with the provisions of Section 23 of the Panchayat Act. Such proceeding will be initiated as a separate proceeding and will continue, till the same is reached to its logical conclusion in terms of Section 23 of the Panchayat Act. The same shall be independent of

the directions which have already been given by this Court on the findings of the District Magistrate and the Executive Officer of the SSDA in Part-A of this order.

If the pre-existing structures cannot be identified or have been built upon, as per the approval, in that case, Part-A of the order shall govern the entire proceeding.

The orders impugned before this Court shall be treated as findings with regard to the illegal construction. However, the extent and identification of the unauthorized plan and implementation thereof shall be as per the directions in Part-A of the order.

As no affidavit-in-opposition has been called for, the allegations contained in the writ petition are deemed to be denied.

Accordingly, the writ petition and the application being CAN 1 of 2022 are disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)