

S/L 11
14.09.2022
Court. No. 19
GB

W.P.A. 20615 of 2022

Sisir Roy
VS
The State of West Bengal & Ors.

*Ms. Sutapa Sanyal,
Mr. Jahangir Badsha.*

...for the Petitioner.

*Mr. Rajarshi Basu,
Mr. Kapil Guha.*

...for the State.

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

It appears that the Pradhan, Madhabpur Gram Panchayat has issued a notice dated June 24, 2022 upon the petitioner, indicating that the petitioner had been making a construction without leaving 3ft. wide side space from the panchayat road. It further appears that the Sub-Divisional Officer, Arambagh, Hooghly has issued a notice on August 4, 2022 to the petitioner to attend a hearing. The petitioner wrote a letter to the Sub-Divisional Officer, Arambagh, Hooghly, praying for an adjournment for a month on the ground of ill health.

According to the petitioner, a plan had been submitted before the authority for permission. The said plan was kept pending. The petitioner did not receive any information from the authority. The petitioner by invoking Rule 30 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 (hereinafter referred to as the 'said Rules'), started raising construction. The authority upon making an inspection informed the petitioner that the

construction was made without leaving the required 3ft. wide side space.

This Court is of the view that if the Gram Panchayat was of the opinion that the petitioner had violated the building rules while raising the construction, proceeding should have been initiated in terms of Section 23(5) of the West Bengal Panchayat Act, 1973. Only upon coming to a finding after hearing the petitioner and upon making necessary inspection, can the permission granting authority (Gram Panchayat) refer the matter to the Sub-Divisional Officer. It does not appear that such exercise had been undertaken by the panchayat authorities. The notice that had been issued, could at best be treated as a stop work notice with a, *prima facie*, finding.

The notice annexed to the writ petition, *prima facie*, indicates that the panchayat authority had detected violation of the rules and the plan. Inspection was not made in the presence of the petitioner and the report was also not supplied to the petitioner. This Court is of the view that rules of natural justice demand that the petitioner ought to have been present at the time of the alleged inspection.

Under such circumstances, the writ petition is disposed of with the following directions:-

- a) The concerned Gram Panchayat shall act and proceed in accordance with the Section 23(5) of the West Bengal Panchayat Act, 1973.

- b) Before any decision is taken, an inspection shall be held with regard to the alleged construction, in presence of the petitioner.
- c) Report of such inspection shall be prepared and supplied to the petitioner.
- d) The petitioner shall be allowed to respond to such report. The petitioner shall also be heard on all the issues raised. The issue of deemed sanction as per Rule 30 of the said Rules shall also be considered.
- e) In case, it is detected that there is an unauthorized construction or any construction in violation of the building rules (without leaving 3ft. wide side space), such finding shall be indicated in the report.
- f) An opportunity to rectify the defect within a stipulated period, shall be given to the petitioner. In case, it is not rectified, the entire record shall be referred to the Sub-Divisional Officer for necessary demolition.
- g) Before undertaking demolition, an opportunity of hearing shall be given to the petitioner.

This Court has not gone into the merits of the claims either of the petitioner or the panchayat authority. The issues raised shall be decided in accordance with law, independently and on the basis of the inspection. The fate of the plan that had been submitted shall be intimated to the petitioner. Till such decision is taken, no construction will be permitted.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)