

14.09.2022
Sl. No.41(DL)
srm

W.P.A. No. 20851 of 2022
M/s. Fena Private Limited & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Hareram Singh,
Mr. Samit Rudra,
Mr. Mahesh Joshi,
Mr. Kajal Dumar Dutta,
Mr. Sandeep Joshi

....for the Petitioners.

Mr. Shailendra Jain,
Mr. Farhan Ghaffar

...for the Respondent Nos.9 & 10.

The petitioners have alleged that without having any requisite permission from the permission granting authority under Section 23 of the West Bengal Panchayat Act, 1973, the respondent Nos.9 and 10 have been raising an unauthorized construction at the industrial estate. The allegation is that the construction is being done without leaving the mandatory side spaces as per the rules.

Learned Advocate for the respondent Nos.9 and 10 submits that the learned Civil Judge (Junior Division), 1st Court at Howrah has passed an order in Title Suit No.684 of 2022, *inter alia*, restraining the defendants/writ petitioners from creating any disturbance in the construction work, which was going on. Under such

circumstances, it is prayed that neither the Writ Court, nor the competent authority could prevent such construction until and unless the order of the learned civil court is either varied, vacated or modified.

Reliance has been placed by the petitioners on a communication from the Assistant Engineer, Howrah Zilla Parishad indicating that no plan had been sanctioned in the name of Surendra Kumar Chhaparia and Sumit Kumar Agarwal as per the records of the Howrah Zilla Parishad. While the petitioners allege that the Howrah Zilla Parishad was the vetting authority, the respondent Nos.9 and 10 submit that the panchayat was the sanctioning authority. The petitioners are not in a position to indicate as to why, as per Rule 27 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004, the Zilla Parishad would be the appropriate vetting authority. The plinth area and the height of the building have not been disclosed.

Thus, without *prima facie* being satisfied whether the allegations of the petitioner are correct or not, order as prayed for in the writ petition, cannot be passed. Vague allegations without any specification cannot be entertained. The petitioners are at liberty to approach the appropriate permission granting authority, by disclosing the alleged irregularity or illegality in the construction. If

such allegation is made, the same shall be disposed of in accordance with law, upon hearing the petitioners and the respondent Nos.9 and 10. Undoubtedly the competent authority to decide such issue is the permission granting authority.

In view of the order passed by the learned civil court, even if the authorities find that the construction to be illegal and without permission, it would be necessary for the petitioners to first approach the learned civil court for necessary directions or modifications. When by the order of the learned civil court, the defendants have been restrained from interfering with the construction, the question of directing further action including demolition of the construction on the basis of the findings of the authority, cannot be passed.

The petitioners are at liberty to either challenge the order of the civil court before superior forum or pray for modification of the civil court.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)