

D/L
Item No. 3
01.12.2022
KOLE

**MAT 1518 of 2022
With
IA No. CAN 2 of 2022**

**Murari Purkait
-Vs.-
The Shikharbali Gram Panchayat-II & Ors.**

*Mr. Partha Sarathi Bhattacharyya, Sr. Adv.
Mr. K. Chowdhury,*

...for the appellant.

Mr. Mahim Sasmal,

...for the respondent no. 2.

*Mr. Malay Krishna Dey,
Mr. Subrata Ghosh,*

...for the State.

*Mr. Kollol Basu,
Mr. Srikanta Paul,
Mr. Samik Sarkar,*

...for the respondent nos. 10 to 12.

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

A judgment and order dated July 13, 2022, whereby WPA 13763 of 2021 was disposed of by a learned Single Judge, is the subject matter of challenge in this appeal.

It appears that the appellant had applied to the concerned Gram Panchayat for sanction of a building plan. Such sanction was granted. Subsequently, by an order dated July 11, 2014, the Pradhan of the Gram Panchayat revoked the sanction and cancelled the building plan. Such revocation order was challenged by the appellant by filing WP No. 24625 (W) of 2014. That writ petition was disposed of by a learned Single Judge of this Court by an order dated September 17, 2014, the operative portion whereof reads as follows:-

“I have heard the learned Counsel appearing for the respective parties and I have considered the facts and circumstances of the case. Admittedly, the impugned order was passed canceling a building plan sanctioned in favour of the petitioner to raise construction on the plot of land under reference. The impugned order was passed by the respondent no. 5, Pradhan of the Gram Panchayat concerned.

After considering the provisions of Section 23 of the West Bengal Panchayat Act, 1973, I find that the Gram Panchayat concerned was the competent to pass the impugned order.

In view of the above, I find that the impugned order was passed by the respondent no. 5 without jurisdiction and the same is quashed and set aside.

This will not, however, prevent the respondent no. 4 to take steps afresh in respect of the building sanctioned plan under reference in accordance with law.”

Pursuant to the liberty reserved in such order, the Pradhan in charge of the Gram Panchayat issued a notice of hearing to all concerned parties including the appellant and the writ petitioners herein. Such notice was issued on behalf of the Gram Panchayat. Hearing was held. The appellant and the writ petitioners attended the hearing along with their respective representatives. All the members of the Gram Panchayat were present at the hearing. As the order dated 09.11.2015/16.11.2015 shows, all the present members of the Gram Panchayat unanimously came to a conclusion that the appellant herein had made gross misrepresentation while applying for sanction of the concerned building plan. The members of the Panchayat unanimously decided that the sanction should be withdrawn, the building plan should be cancelled and the construction made on the basis of such building plan should be demolished.

Since effect was not given to the said order of the Gram Panchayat, the present writ petitioners approached the learned Single Judge by filing WPA 13763 of 2021. By the order impugned in this appeal, the learned Judge directed the Sub-divisional Officer, Baruipur “to ensure that the order passed by the Pradhan-in-Charge, Sikharbali Gram Panchayat-II is duly executed at the earliest. The sub Divisional Officer shall, if required, take the assistance of the Inspector-in-Charge, Baruipur Police Station at the time of demolition of the unauthorized construction.” The Sub-divisional Officer was directed to execute the demolition order within sixty days from the date of communication of the learned Judge’s order. The present appellant, who was the respondent no. 10 in the writ petition, was restrained from interfering with the demolition process. Being aggrieved, the respondent no. 10 in the writ petition has come up by way of this appeal.

Appearing for the appellant Mr. Bhattacharyya, learned Senior Counsel, argued that the order of demolition is without jurisdiction. In the scheme of Section 23 of the West Bengal Panchayat Act, 1973, it is the Gram Panchayat which can sanction a building plan and as a corollary can revoke a building plan on adequate grounds. The Pradhan is not the authority. The Pradhan cannot sanction a building plan or revoke the sanction. In the present case, the Pradhan in charge has signed the order for revocation of the permission and demolition of the concerned construction. The communication of the order is also by the Pradhan and not by the Gram Panchayat. Hence, the order is without

jurisdiction and, therefore, void. Mr. Bhattacharyya has drawn to our attention Rules 26 and 27 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004. We have not called upon the respondents to make submission.

We have gone through the reasoned order dated 09.11.2015/16.11.2015, whereby the concerned building plan that had been sanctioned in favour of the appellant, was cancelled and the appellant was called upon to demolish the impugned construction, failing which the appropriate authority would carry out such demolition work. It is clear from the body of the order that the notice of hearing was issued by the Pradhan in charge on behalf of the Gram Panchayat and not in his individual capacity as Pradhan in charge. The hearing was also held before the members of the Gram Panchayat and not only before Pradhan in charge. The decision to revoke the sanction of the concerned building plan and direction to the appellant to demolish the impugned construction was also taken by the members of the Gram Panchayat unanimously and not by the Pradhan in charge alone. It is true that the order was signed by the Pradhan in charge but he did so on behalf of the Gram Panchayat. In our view, as the Pradhan he was competent to do so, and the provisions of Section 34 of the West Bengal Gram Panchayat Act, 1973 would support this view. That Section enumerates the powers, functions and duties of the Pradhan and Upa-pradhan. Section 34 (1)(d) reads as follows:-

“34(1)(d). for the transaction of business connected with this Act or for purpose of

making any order authorized thereby, exercise such powers, perform such functions and discharge such duties as may be exercised, performed or discharged by the Gram Panchayat under this Act or the rules made thereunder:

Provided that the Pradhan shall not exercise such powers, perform such functions or discharge such duties as may be required by the rules made under this Act to be exercised, performed or discharged by the Gram Panchayat at a meeting;”

Further, Rule 27(4) of the 2004 Rules referred to above provides as follows:-

“27 (4). As soon as may be, after the Gram Panchayat grants or refuses permission under sub-rule (1), the Pradhan or the Upa-Pradhan or the person authorized in this behalf shall communicate in writing to the applicant of the permission granted for the construction sought for or the refusal in this behalf, as the case may be. In case of permission, one approved copy of the building plan and of the site plan shall be returned to the applicant, and the date within which the erection or construction is to be completed, shall be communicated. The applicant shall be informed of the grounds of refusal and further actions that may be taken by him in this regard.”

Therefore, there is no irregularity in the Pradhan communicating the order of cancellation of sanction and the order of demolition to the appellant herein.

We do not find that the demolition order, implementation of which the learned Single Judge has directed, is without jurisdiction. The decision contained in the order is that of the Gram Panchayat and not of the Pradhan in charge. Since the said order has not been interfered with by any competent higher forum, the learned Judge committed no error in directing that the order must be carried out. We find no infirmity in the order under

appeal which does not warrant interference on any ground. The order of the learned Single Judge shall be carried out as directed.

The appeal and the connected application fail and are, accordingly, dismissed. *Interim* order, if any, stands vacated.

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

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)