

S/L 3
23.12.2022
Court. No. 19
GB

W.P.A. 21624 of 2022

Gopal Maiti & Anr.
VS
The State of West Bengal & Ors.

Mr. Debashis Banerjee
Mr. Supreem Naskar
Mr. Shuddha Patra
Mr. Rakesh Jana

...for the Petitioners.

Mr. Himadri Sekhar Chakraborty
Ms. Susnita Saha

...for the State.

Mr. Uttam Kr. Bhattacharya
Mr. Kaustav Mishra

...for the Respondent Nos.3 & 4.

Mr. B.K. Samanta

...for the Respondent No.7.

Affidavits filed by the parties are taken on record.

This Court is not inclined to go into the disputed questions of facts at this stage as the Court is of the opinion that the Purba Medinipur Zilla Parishad, who is the formal permission granting authority did not complete the exercise as contemplated under Section 160A(6) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'said Act') as amended in 2017. The law which was applied in this case was the earlier law which has since been amended. Section 160A(6) of the said Act provides as follows:-

"160A(6). Where any new structure or new building or any addition to any structure or building is being or has been erected or made, as the case may be, in contravention of the provision of sub-section (1), the matter shall be heard by a hearing officer who shall preferably be a retired senior Government Officer with the experience of having worked as a Magistrate and shall be appointed in the Zilla Parishad by the State Government. The

hearing officer shall, after giving the owner of such building an opportunity of being heard, submit his recommendation to the Executive Officer of the Zilla Parishad. The Executive Officer of Zilla Parishad shall take decision for demolition of the building or a portion of the building, as the case may be, by the owner within such period as may be specified in order and in default, issue direction to the Sub-Divisional Officer concerned to effect the demolition and to recover the cost thereof from the owner as a public demand. In case of any difference of opinion between the Executive Officer of the Zilla Parishad and the hearing officer, the matter shall be referred to the Additional Chief Secretary or the Principal Secretary or the Secretary of the State Government for final disposal.”

There is already a preliminary finding of the Secretary of the Zilla Parishad that the building was constructed before the plan has been sanctioned. That the construction was beyond the sanction plan and sufficient side spaces had not been left between the constructed building and the boundary wall.

These issues shall be treated as preliminary findings of unauthorized construction. It appears that the Zilla Parishad asked the petitioners to demolish the unauthorized portions as per the demarcated area. However, the exercise as contemplated in Section 160A(6) of the said Act has not been undertaken by the panchayat authorities.

Mr. Bhattacharya, learned advocate appearing on behalf of the Zilla Parishad submits there is still no notification from the State Government designating a hearing officer in terms of Sub-Section 6 of Section 160A of the said Act in respect of the Purba Medinipur Zilla Parishad.

Thus, this Court is of the view that in terms of the amended provisions of Section 160A(6) of the West Bengal Panchayat Act, 1973 a further hearing must be given by the designated hearing officer before any demolition is directed.

If the State Government has not yet appointed any hearing officer in case of the said Zilla Parishad, in terms of the amendment, then immediate steps shall be taken in this regard so that the entire exercise as contemplated under Section 160A(6) of the said Act is completed by the authority within a period of four months from the date of communication of this order. The State Government will designate a hearing officer for the Purba Medinipur Zilla Parishad, within a period of one month from the date of communication of this order.

As the formal permission granting authority is the Purba Medinipur Zilla Parishad and also the authority designated to take steps in respect of the unauthorized construction as per law, all further steps in respect of such construction has to be taken by the Purba Medinipur Zilla Parishad under Section 160A(6) of the said Act.

Needless to mention, a further inspection shall be held in the presence of the parties in order to demarcate and delineate the deviation from the plan and the unauthorized portions of the construction. A sketch map and a report shall be prepared by the competent authority of the Zilla Parishad and handed over to the parties as also to the hearing officer. Thereafter, the hearing officer as designated by the State Government shall proceed in accordance with law and take

necessary steps on the basis of what transpires at the hearing, strictly in accordance with Sub-Section 6 to Section 160A of the said Act.

The portion of the order impugned directing demolition is set aside.

All opportunities shall be given to either of the parties to make their oral submissions and also file their written versions in respect of the said issue.

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.)