

31.10.2022
Court No. 19
Item no.24
CP

W.P.A. No. 22147 of 2022

Tapan Halder & ors.

Vs.

The State of West Bengal & Ors.

Mr. Shahan Shah
Mr. Soumen Barman

.....for the petitioners.

Mr. Sabyasachi Chatterjee
Mr. Sandipan Das
Mr. Babul Karim
Ms. Priyanka Paul

....for the respondent nos. 6 & 7.

The petitioners allege that the respondent nos. 6 & 7 had raised certain unauthorized construction on L.R. Dag No. 297 under Mouza – Muraripur, District – South 24-Parganas. . The first allegation is that the said construction has been made on a land which has been classified as a ‘pukur’. Secondly, such construction had been made without any sanction and/or permission from the concerned permission granting authority.

Mr. Chatterjee, learned advocate appearing on behalf of the respondent nos. 6 & 7, submits that law provides that the Sub-Divisional Officer may allow retention of any construction as per Section 23(5) of

the West Bengal Panchayat Act, 1973. According to him, incorporation of Sub-Section (5) by way of an amendment in 2017, itself is an indication that the Sub-Divisional Officer has been given such additional power or else such amendment would be redundant. He submits that the legislature would not have unnecessarily incorporated Sub-Section (5) unless the intention was to confer discretion upon the Sub-Divisional Officer to grant post-facto approval to a building.

The petitioners allege that the construction has been made on a 'pukur' and without permission. Allegation is that such construction is in violation of Section 23 of the West Bengal Panchayat Act, 1973 (hereinafter referred to as 'the said Act'), and the rules framed thereunder.

Section 23 of the said Act prevents construction or any addition or alteration to an existing construction within the jurisdiction of the gram panchayat, except with the previous permission in writing from the gram panchayat. Such provision has been made applicable to all constructions having plinth area of not more than 150 square metres and height not more than 6.5 metres. Sub-Section (5) states that if any construction has been made in contravention to Sub-Section (1) of Section 23 of the said Act, the permission granting authority, (namely,

the concerned gram panchayat) shall refer the matter to the Sub-Divisional Officer who may, after giving an opportunity of being heard, make an order directing demolition of the building or a portion of the building, as the case may be, by the owner within a specified period and in default, the Sub-Divisional Officer may effect the demolition and impose a fine, as may be specified by the State Government and recover the cost thereof from the owner as a public demand.

Mr. Chatterjee's contention that the Sub-Divisional Officer has been given a power to retain a construction, is not reflected in Sub-Section (5) of the said Act.

Mr. Chatterjee contends that if such power is not read into the provision of Sub-Section (5) of the said Act, then the provision of Sub-Section (6) becomes redundant. The further contention of Mr. Chatterjee is that Sub-Section (6) provides that the authority may or may not direct demolition of an unauthorized construction.

Such contentions also cannot be accepted as the Sub-Sections neither provide nor empower the concerned authority, i.e., the Sub-Divisional Officer the discretion to retain any construction or grant post facto approval. The provisions are clear and unambiguous. The sub-sections lay down the

manner in which demolition of an unauthorized structure can be effected by the authority. If the permission granting authority, i.e. the gram panchayat finds that there has been illegal construction, the permission granting authority is mandated to refer the matter to the concerned Sub-Divisional Officer. The concerned Sub-Divisional Officer is mandated to give a hearing to the owner of the building and then pass necessary orders of demolition.

There is no reason for reading down the provisions and to arrive at a conclusion that Sub-Sections (5) and (6) of the said Act disclose an implied power upon the Sub-Divisional Officer to retain an unauthorized construction on certain terms and conditions or pass necessary orders granting post facto approval. The rules also do not permit sanction or permission to construct on any land other than homestead land.

Under such circumstances, the contention of Mr. Chatterjee is not accepted. However, this court is not entering into the factual aspects with regard to the allegations. These issues are to be decided by the permission granting authority and the permission granting authority shall act and proceed in accordance with law by disposing of the

representation of the petitioners which is Annexure P-2 at page 18 of the writ petition.

While doing so, the following procedure shall be adopted by the Mathurapur Paschim gram panchayat.

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent nos. 6 & 7. An advance notice of the inspection shall be served upon the petitioners and the respondent nos. 6 & 7 and all other interested parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.
- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and was continuing, the authorities may take such interim measures by stopping such construction.
- c) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.
- d) Such report shall be handed over to the parties.

- e) A hearing shall be given to the petitioners and the respondent nos. 6 & 7. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority. All points raised by either party, will be decided.
- f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of Section 23(5) of the West Bengal Panchayat Act.

The court has not gone into the merits of the claims.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

The question of title, possession and boundary etc. shall not be decided by the panchayat authorities. The only question to be decided by the panchayat authorities, would be whether the construction has been made without any permission and/or in violation of the building rules and the relevant laws.

A copy of the writ petition along with a server copy of this order be served upon the concerned gram panchayat for necessary compliance of this order.

The observations of the court are only restricted to the disposal of the writ petition and it is expected that the authority shall adjudicate the entire issue independently and on the basis of the submissions of the respective parties.

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.)