

S/L 5
21.11.2022
Court. No. 19
GB

W.P.A. 22579 of 2022

Ashok Samanta
VS
The State of West Bengal & Ors.

*Mr. Tanmoy Mukherjee,
Ms. Rimpay Mukherjee.*

...for the Petitioner.

*Mr. Susanta Pal,
Ms. Ananya Neogi.*

...for the State.

*Mr. Biswarup Biswas,
Mr. Sarwar Jahan,
Mr. Maidul Islam Kayal.*

...for the Respondent No.12.

Mr. Sanjay Saha.

...for the Respondent No.13.

The order of the Sub-Divisional Officer/Sub-Divisional Magistrate, Egra dated August 10, 2022 is the subject matter of challenge in the writ petition.

It appears that the Sub-Divisional Officer was utterly confused with regard to the scope of Section 23(5) of the West Bengal Panchayat Act, 1973.

While it is the specific case of the gram panchayat, that the petitioner had not been given sanction/permission to raise the construction, the Sub-Divisional Officer came to a finding that as the construction continued without any objection from the panchayat authority, there was implied approval.

Such finding is contrary to the law.

Moreover, the petitioner had already brought the issue of unauthorized construction to the notice of the authority. In an answer to the query of the petitioner under the Right to

Information Act given by the concerned gram panchayat, it was categorically stated that neither the respondent no.13 nor his father had any sanction from the gram panchayat. The next error in the decision, is the finding of deemed sanction.

The learned advocate for the respondent no.13 submits that a plan had been approved by the gram panchayat. Such submission is contrary to the stand of the gram panchayat.

The Sub-Divisional Officer was apprised by the gram panchayat during the proceedings, that no plan had ever been submitted along with requisite fees in the proper form, before the gram panchayat.

Thus, when there was no application in the eye of law in the prescribed format and no fees had been deposited, the question of deemed sanction would not arise.

The further illegalities in the order are the findings with regard to possession and the area of land owned and occupied by the parties, especially the respondent no. 13.

Neither the Sub-Divisional Officer nor the gram panchayat authorities are empowered by law to decide the issues with regard to title, possession, boundaries etc.

The questions that were required to be decided in the proceeding were whether the respondent no.13 or his predecessor had an approved building plan and/or a permission from the concerned gram panchayat. If so, whether the construction was in accordance with such plan. The submission of the gram panchayat that no application in the prescribed form along with the requisite fees had been deposited by the respondent No. 13. should have been taken

into account while deciding the question of deemed sanction or implied approval.

Under such circumstances, the order impugned is not sustainable. The same is set aside. The matter is remanded to the Sub-Divisional Officer/Sub-Divisional Magistrate, Egra, Purba Medinipur for a fresh determination upon hearing all the parties. The respondent No. 13 will be entitled to produce all relevant documents in support of such construction and in support of the plea of deemed sanction. The authority shall strictly adhere to the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973. The issues to be decided are as follows:-

- a) Whether there was an approved plan and permission from the gram panchayat.
- b) Whether the plea of deemed sanction would be available.
- c) Whether an application in the prescribed form had been submitted in the panchayat office with the prescribed fees, which was not acted upon and thus the respondent no.13 could assume that there was deemed sanction as per law and raise the construction.

On the basis of such findings, the authority shall pass a reasoned order and take necessary steps if the issues go against the respondent No.13.

The entire exercise shall be completed within a period of eight weeks from the date of communication of this order. No other issue shall be decided by the Sub-Divisional Officer.

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.)