

S/L 22
24.11.2022
Court. No. 19
GB

W.P.A. 30712 of 2016

Swapan Nayak
VS
The State of West Bengal & Ors.

*Mr. Joydip Banerjee,
Ms. Mousumi Banerjee.*

...for the Petitioner.

*Mr. Asish Kumar Guha,
Mr. N. Ghosh Dastidar.*

...for the State.

Affidavit-of-service filed in Court today, be kept with the record.

It appears that the learned advocate for the respondent no.6 was personally served a notice on November 22, 2022 in compliance of the direction of this Court.

It also appears that a copy of this order was served upon the panchayat authorities as also respondent no.6. The matter is taken up in their absence as they have chosen not to appear.

The petitioner approached this court challenging inaction on the part of the panchayat authorities. A complaint was lodged before the Pulsita gram panchayat that the respondent no.6 had raised an unauthorized construction. A coordinate Bench of this Court by an order dated February 7, 2017 appointed a civil engineer to cause an inspection in view of the confusions which had arisen with regard to the alleged construction.

Such order was passed in the presence of the learned advocate for the respondent no.6.

The civil engineer caused an enquiry and filed a report before the Court in a sealed envelope. The report is not available in the records but the same has been set out in the order. It appears that the civil engineer appointed by the Court had found irregularities. For convenience, the relevant portion of the said report is quoted below:-

“It is pertinent and important to mention here that in the plan it has been mentioned that the Ground Floor is Existing and First & Second Floor are proposed on the date of plan was submitted and signed on 05-07-2016 by Pradhan of the Gram Panchayat. Further, it has been mentioned in the building plan that the plan is ‘Proposed Additional & Alteration Work Over A New Constructed Building’ From the above it appears that;

i) Either there might be one original plan and this plan signed on 05-07-2016 is subsequent plan. The father of the owner, Sri Mohan Maji informed that there was no earlier plan

Or

ii) There was no plan submitted earlier and plan signed by the Pradhan of the Gram Panchayat on 05-07-2016 is only plan.

CONCLUSION;

- i) An additional area of 72 Sq. ft has been constructed on Ground Floor beyond plan.*
- ii) An additional area of 223 sq.ft has been constructed on First Floor beyond plan.*
- iii) It is abundantly clear from building plan that there existed building on Ground Floor prior to plan was signed by the Pradhan of the Gram Panchayat and First and Second Floor is proposed to be constructed over Ground Floor on 05-07-2016, the date of submitting the plan and signing the plan by the Pradhan of the Gram Panchayat.*

*(K.S. Bhatia)
Civil Engineer.”*

Thus, the enquiry conducted by the Court through the civil engineer/special officer revealed that 72 sq.ft of the ground floor was beyond the plan and additional 223 sq.ft, which was constructed on the first floor was beyond the plan.

The date of submission of the plan was July 5, 2016. The report stated that it was abundantly clear from the plan that there was an existing ground floor prior to sanction of the plan.

The Nirman Sahayak of the gram panchayat also conducted an enquiry on behalf of the panchayat authorities and an enquiry report was filed by the joint Block Development Officer containing the enquiry report of the panchayat authority. It appears that 3 ft. mandatory space required to be kept vacant was not maintained. The sanction plan was approved on February 12, 2016 for construction only of the ground floor. There were serious irregularities in such construction.

It is clear that the exercise required to be done by the panchayat authorities has been completed. The Court itself also caused an enquiry through a civil engineer who was appointed by the Court to make the inspection . There can be no doubt that there are irregularities. Neither exceptions to the report nor any objection to the same has been filed by the respondent no.6. This matter has been running in the list for a while and despite notices the respondent no.6 has chosen to stay away.

As the respondent no.6 has not rectified the defects by removing the unauthorized portions, this Court deems it fit to direct the concerned panchayat authorities to refer the entire matter with all the records and the enquiry report conducted by the Nirman Sahayak to the Sub-Divisional Officer, Tamluk in terms of Section 23(5) of the West Bengal

Panchayat Act, 1973 within a period of two weeks for necessary compliance. The petitioner will also transmit the report of the civil engineer and the different orders of this Court along with a copy of the writ petition to the said Sub-Divisional Officer for necessary compliance of Section 23(5) of the West Bengal panchayat Act, 1973. The petitioner is also directed to communicate this order to the Pulsita Gram Panchayat for necessary compliance. A hearing shall be held by the Sub-Divisional Officer. The petitioner and the respondent no.6 shall be represented by their learned advocates before the Sub-Divisional Officer. Thereafter, steps shall be taken in accordance with law. A reasoned order shall be passed and communicated to all. The authority will deal with all the contentions of both the parties and may cause a further inspection in order to measure the unauthorized construction. Parties must be present at the time of inspection.

The entire exercise shall be completed within a period of two months from the date of receipt of the records from the panchayat authorities.

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.)