

02. 18.04.2022
BD Ct.15

W.P.A. 32572 of 2014

Sitanath Guin

-vs-

The State of West Bengal & Ors.

Mr. Pushpal Chakraborty

Mr. Arkadipta Sengupta

Ms. Prisanka Ganguly

... for the petitioner.

Mr. P.S. Bhattacharya

Mr. Sukanta Chakraborty

Mr. Anindya Halder

Mr. Raju Bhattacharya

... for the respondent nos.

10A to 10E.

Mr. Ziaul Islam

Mr. Abdus Salam

... for the State.

Mr. Apurba Kumar Dutta

... for the respondent no.3

Mr. Sandip Kumar Bhattacharya

Mr. Suman Basu

... for the Hooghly

Zilla Parishad/

respondent no.5.

The writ petition is taken up for hearing in presence of the learned advocates representing the petitioner, State respondents, Pradhan, Begumpur Gram Panchayat, Hooghly Zilla Parishad and the added private respondents.

In the writ petition challenge has been thrown to the decision of the appellate authority dated 20th December, 2013 which has been passed

pursuant to the order dated 12th February, 2013 passed by the Co-ordinate Bench on the two writ petitions one preferred by the writ petitioner herein and another by the predecessor-in-interest of the added respondents.

Mr. Pushpal Chakraborty, learned advocate appears on behalf of the writ petitioner and has drawn attention of this Court to the Report of Pradhan Begumpur Gram Panchayat, respondent no.3 which was placed before the Co-ordinate Bench pursuant to order dated 28th January, 2013. It has been submitted on behalf of the petitioner that such report which was placed before the Co-ordinate Bench pursuant to the order dated 28th January, 2013 is in favour of the writ petitioner wherein there is a specific findings made by the respondent no. 3 that the predecessor-in-interest of the added respondents erected construction at the adjacent premises of the petitioner without any approved sanctioned plan of the respondent authorities. Such report of the respondent no. 3 starts at page 39 and the relevant part is at page 46 of the writ petition which is quoted below:

“ From enquiry made by me and after perusing materials on record and after hearing the parties I am of the view that the entire construction carried out by Sri Abul Hasan Mallick is without any sanctioned plan from appropriate authority and is absolutely illegal. I pray for appropriate orders/directions from this Hon’ble Court on the issue and also leave to take steps as

available under the law. I have relied the papers and documents as available are annexed hereto and marked as Annexure "C".

While questioning the order of the appellate authority dated 20th December, 2013 it has been submitted on behalf of the petitioner that the order of the appellate authority is cryptic one and nothing has been defined by the appellate authority that which part of the construction made by the predecessor-in-interest of the added respondents is unauthorised and which part has been constructed pursuant to the plan submitted by the private respondents. It is contended that simply upon placing reliance on Regulation 30 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 (for short "Rules of 2004") the appellate authority decided the appeal in favour of the private respondents without assigning any cogent reason. It has been submitted that had there been due consideration by the appellate authority on the report submitted by the respondent no. 3 before the Co-ordinate Bench then the fate of appeal could have been different.

Mr. Ziaul Islam, learned advocate, appears on behalf of the State respondents including the appellate authority and has defended the order dated 20th December, 2013 passed by the said appellate authority. It is contended by Mr. Islam that since at the material point of time no decision was taken by the respondent no. 3 on the plan submitted by the private respondents therefore

there was no error made by the appellate authority in applying Rule 30 of the Rules of 2004 and as such, it has been submitted that there is no anomaly in the order passed by the appellate authority.

Mr.P.S.Bhattacharya, learned senior advocate appears on behalf of the private respondents and has submitted that before the appellate authority it has been specifically submitted on behalf of the private respondent that the plan was submitted for construction of a G+3 building and the concerned respondent authorities failed to take any decision on submission of such sanctioned plan therefore in terms of the relevant provisions of the said rules of 2004 the private respondent constructed his building as per the said plan and Rule 30 of the said Rules of 2004 comes in his aid. Accordingly the decision taken by the appellate authority has also been supported on behalf of the private respondents keeping in view of the fact that building plan was submitted before the respondent authorities.

This Court having considered the decision of the appellate authority dated 20th December, 2013 and also taking note of the submission made on behalf of the private respondents has asked Mr. Bhattacharya, that when such building plan was submitted before the concerned authorities seeking approval of the same, but this Court is unable to get any satisfactory answer from Mr. Bhattacharya.

Mr. Sandip Kumar Bhattacharya, learned

advocate, representing the Hooghly Zilla Parishad has submitted that Zilla Parishad has no role to play in this matter since it is empowered to vet the plan submitted by the parties seeking approval from the respondent no. 3 on such plan being forwarded by the respondent no. 3 to the office of the Zilla Parishad.

This Court has considered the submissions of the parties and also perused the relevant materials available on record. It appears that pursuant to the order passed by the Co-ordinate Bench on 28th January, 2013 the respondent no. 3 after considering materials available on record in his office took decision in the form of report which was placed before the Co-ordinate Bench on 12th February, 2013 and the Co-ordinate Bench while considering the two writ petitions preferred by the writ petitioner and the private respondent granted leave to the aggrieved party to prefer appeal before the appropriate authority in terms of Rule 38 of the said Rules of 2004. Since the decision/report of the respondent no. 3 which was produced before the Co-ordinate Bench on 12th February, 2013 went against the private respondent an appeal was preferred by the private respondent before the appellate authority and ultimately the appellate authority passed impugned decision on 20th December, 2013 which is subject matter of challenge in the present writ petition.

This Court has perused the order of the appellate authority dated 20th December, 2013. It appears that appellate authority has proceeded to

take decision on the fate of the construction made by the private respondent upon applying Rule 30 of the Rules of 2004 since according to the appellate authority no decision was taken either in confirmation or in negation on the plan submitted by the private respondent at the material point of time. The appellate authority proceeded since no decision was communicated either by the respondent no. 3 or by the Zilla Parishad therefore it is to be deemed that private respondent can proceed on the basis of the plan submitted by them.

Question arises for consideration is whether such plan was at all submitted by the private respondent before the respondent no. 3 or Zilla Parishad seeking approval thereon. On perusal of the order passed by the appellate authority it appears that the appellate authority was also in dilemma with regard to the part of the building which was constructed based on the plan submitted by the private respondent and part of the building which was constructed not in accordance with such building plan. The issue needs to be decided by the appellate authority again upon coming to a finding whether at the material point of time any proposed building plan was submitted by the private respondent before the concerned respondent authorities seeking approval and the date of submission of such building plan; until and unless date is identified the question of counting 60 days from the date of submission of building plan does not arise in terms of Rule 27(5) of the Rules of 2004. It is also required to be

ascertained which part of the building was constructed by the private respondent based on such building plan, if at all submitted at the material point of time by the private respondent. An identification is required to be made which part is constructed as per such building plan and which part is not constructed under the proposed building plan.

On perusal of the order of the appellate authority it transpires that there is no proper consideration by the appellate authority on the report submitted by the respondent no. 3 before the Co-ordinate Bench on 12th February, 2013. Therefore the appellate authority is also required to consider the report submitted by the respondent no. 3 before the Co-ordinate Bench on 12th February, 2013 before passing final order.

In view of the above discussion the order of the appellate authority dated 20th December, 2013 is set aside and the appropriate appellate authority is directed to rehear the appeal preferred by the private respondents within a period of (8) eight weeks from the date of communication of this order after hearing the writ petitioner, private respondents, Zilla Parishad and the respondent no. 3 and shall pass a final order and to dispose of the said appeal. The appellate authority is required to assign reasons in support of the decision to be taken considering the aforementioned observations made by this Court. In view of such direction passed by this Court the appeal preferred by the private respondents gets revived.

Till the decision to be taken by the appellate authority pursuant to the order passed by this Court no further construction is to be carried out by the private respondents.

With the above direction and observation the writ petition stands disposed of. However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)