

17.04.2023
Court No. 19
Item no.04
CP

WPA No. 469 of 2023

Anup Kumar Dutta
Vs.
Baikunthapur – I Gram Panchayat & Ors.

Mr. Abhimanyu Banerjee
Ms. Roshni Kalem
....for the petitioner.

Mr. Uday Sankar Chattopadhyay
Mr. Rajashree Tah
Ms. Trisha Rakshit

.....for the private respondent.

Mr. Biswabrata Basu Mallick
Mr. Sayan Ganguly

....for the State.

Mr. Falguni Majhi

....for the respondent nos. 3 and 4.

Mr. Subhasis Bandopadhyay

....for the respondent no. 2.

The petitioner is aggrieved by the construction on Plot No. FR 14/7, 1st Avenue, Ulhas Mini Township, Post Office – Joteram, which allegedly was constructed by the respondent no. 6. The said construction is within the jurisdiction of the Burdwan Development Authority. Neither the Pradhan of Baikunthapur – I Gram Panchayat nor the Burdwan Development Authority were represented before this court on earlier occasions.

Today, the learned advocates for both the authorities have appeared before this court.

A report has been filed by the Burdwan Development Authority, *inter alia*, stating that permission for use of the land in terms of Section 44 of the West Bengal Town and Country (Planning & Development) Act, 1979 had been given to the respondent no. 6. The respondent no. 6 was permitted to use the land for construction thereon in terms of the Land Use and Development Control Plan (LUDCP).

Learned advocate for the Pradhan submits that as the construction is within the area of a development authority, the permission granting authority was the panchayat samiti and not the gram panchayat. Documents have been submitted, including a copy of a plan which was allegedly sanctioned by the development authority as also the Executive Officer, Burdwan-II Panchayat Samiti, Purba Bardhaman, on April 27, 2022. Thus, the court finds that sanction had been granted.

The petitioner now alleges that the required space to be maintained during any construction within the said area as per the regulation of the Burdwan Development Authority, had not been maintained.

It appears from the plan which has been submitted by the Pradhan, that the measurements have been provided for and approval/sanction was given on such measurements. Any deviation therefrom, would amount to violation of the rules and also the building plan.

In this case Section 114A of the West Bengal Panchayat Act, 1973 will be applicable, as the panchayat samiti is the permission granting authority.

Thus, the petitioner is at liberty to approach the concerned panchayat samiti with his allegation in details. If such representation is filed, the same shall be disposed of in accordance with law.

While disposing of the same, the authorities shall follow the procedure stated hereinbelow:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no. 6 and all other interested parties. An advance notice of the inspection shall be served upon the petitioner and the respondent no. 6 and on 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 interim measures by stopping such construction.
- c) A 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 petitioner, the respondent no. 6 and all other interested parties including a representative of the Burdwan Development Authority. 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 accordance with law.

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 receipt of the representation.

The issues to be decided would be, whether the construction has been made in terms of the sanction granted by the panchayat samiti and the rules and regulations of the Burdwan Development Authority or not. The question of right, title, encroachment and interest etc. shall not be gone into.

A copy of the writ petition along with a server copy of this order be served upon the concerned permission granting authority and the Burdwan Development Authority, for necessary compliance of this order.

Accordingly, the writ petition is disposed of.

The report filed by the Burdwan Development Authority is taken on record.

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.)