

03.04.2023
Court No. 19
Item no.10
CP

WPA No. 1140 of 2023

Prabhat Goswami
Vs.
The State of West Bengal & Ors.

Mr. Jahar Lal Ray
Ms. Kavita Rani

....for the petitioner.

Mr. Raja Saha
Mr. S.P. Lahiri

.....for the State respondents.

The petitioner has challenged the order of demolition passed by the Sub-Divisional Officer, Haldia, dated July 22, 2022. By the said order the petitioner was granted three months' time to remove the excess portion that he had constructed without any permission and beyond the sanction plan. The Block Development Officer, Sutahata was directed to take up the matter in case of failure of the petitioner to demolish the same and execute the demolition process upon assistance from the Chaitanyapur Gram Panchayat, Officer-in-Charge, Sutahata Police Station and the Station Manager of the West Bengal State Electricity Distribution Company Ltd., Chaitanyapur so that all electrical supply line could be disconnected to enable the process of demolition.

Mr. Ray, learned advocate for the petitioner, submits that the construction and the application

filed before the panchayat authorities would be governed by the unamended provisions of West Bengal Panchayat Act, 1973 and the provisions of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 1981.

The petitioner has challenged the said order on the following grounds:

- a) By a letter dated March 11, 2025, an application had been filed before the Pradhan, Chaitanyapur Gram Panchayat. In the said letter, the petitioner sought for permission for construction of the second floor which was kept pending.
- b) As per the provision of Rule 23-I of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 1981, (hereinafter referred to as 'the said Rules'), the deeming provision was applicable and the petitioner was entitled to raise the construction. The panchayat authorities did not intimate the petitioner about the fate of the said letter. Hence, the deeming clause would be applicable and the construction should be treated to be legal and authorized.
- c) The letter should have been forwarded by the panchayat authorities to the zilla parishad, if the proposed height of the

building with the proposed second floor would be more than 6.5 metres.

Admittedly, the petitioner did not apply in duplicate in the prescribed Form 4 of Rule 19 of the 1981 Rules for such permission. The hand written letter praying for permission sometime in 2015 could not be treated as an application in the prescribed form for the purpose of deemed sanction under Rule 23-I of the said Rules. For the deeming clause to be applicable, there should have been a proper application in the prescribed form and deposit of money. It is another matter that the deeming provision has been deleted subsequently from the West Bengal Panchayat Act, 1973, but even if the unamended law was applicable, the application should have been in the prescribed form.

However, even if for arguments' sake it is taken into consideration that the construction was on the basis of deeming provision, the deeming provision would only be applicable in the event there is a proper application in the prescribed form, i.e. Form 4 as contemplated under Rule 19(1) of the said Rules. A mere letter written to the panchayat cannot be treated to be a proper application. The petitioner has not been able to show any documents which would indicate that any drawing along with the money had been deposited along with the said letter. Even if Mr.

Ray's contention that the case in hand should be considered in terms of the 1981 Rules is accepted, the said Rules also provided the procedure for application in Form 4 under Rule 19 thereof.

Rule 19(1) provides as follows:

“19. Application in Form 4. – (1) Subject to the provisions of rule 21, any person intending to erect a new structure of a new building or to make any addition to an existing structure or building in any area within the jurisdiction of a Gram, shall, for obtaining prior permission in writing of the concerned Gram Panchayat, make an application, in duplicate, in Form 4 to the Gram Panchayat; the Secretary or any other employee of the Gram Panchayat authorized by the Pradhan in this behalf, shall receive the application, in duplicate, retain one copy of it and return the other copy noting thereon the date of receipt under his signature and the seal of the Gram Panchayat.”

The other contention of the petitioner that the panchayat authorities ought to have forwarded the application to the zilla parishad in terms of Rule 27A of the said Rules does not impress the court. The petitioner cannot take advantage of a letter written to the panchayat authorities and claim to justify or regularize an unauthorized construction by dint of application of the deeming clause in the 1981 Rules.

At the relevant point of time had the petitioner submitted the application in the prescribed form, following the provisions of Rule 19 of the said Rules,

only in that event the petitioner may have had an arguable case.

Unauthorized constructions are burdens on the society and cannot be allowed to remain. The court should not protect such constructions which have been erected in violation of law. There is a construction of an additional floor which is unauthorized.

In the matter of ***Dipak Kumar Mukherjee v. Kolkata Municipal Corpn.*** reported in (2013) 5 SCC 336, the Hon'ble Apex Court deprecated the practice of regularization and held as follows:-

“24. In view of the pleadings filed before the High Court and the affidavits filed before this Court, there is no escape from the conclusion that Respondent 7 had raised construction in violation of the plan sanctioned under Section 396 of the 1980 Act and continued with that activity despite the order of the Mayor-in-Council. In the prevailing scenario, the representative of Respondent 7 might have thought that he will be able to pull strings in the power corridors and get an order for regularisation of the illegal construction but he did not know that there are many mortals in the system who are prepared to take the bull by horn and crush it with iron hand.

The revised plan, if at all, should have been submitted before any construction had been made in deviation of the plan. In *Dipak Kumar Mukherjee* (supra) it was held as follows:-

“26. A reading of the plain language of Rule 25(1) makes it clear that a person, who erects any structure or executes any work is not entitled to deviate from the sanctioned plan. Rule 25(2) which contains a non obstante clause and provides for sanction of revised plan to be submitted by the person engaged in erection of

building or execution of work lays down that if during erection or execution of work, any internal alterations or external additions which do not violate the provisions of the Act or the Rules is made, the Municipal Commissioner can, at an application made in that behalf sanction the revised plan showing the deviation. Rule 25(3) is declaratory in nature. It lays down that any departure made during the execution of any work or at any time thereafter without sanction, shall be deemed to be in contravention of the Act and the Rules shall be dealt with accordingly.

27. In our view, Respondent 7 cannot take benefit of Rule 25 because the disputed construction was in clear violation of the sanctioned plan and the notices issued by the competent authority of the Corporation and also because the application was made after completion of the construction.”

Even in cases of deviation, the Hon’ble Apex Court ruled against regularization. There is blatant illegality in the construction in hand.

In the matter of **Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn.**, reported in **(2021) 10 SCC 1**, the Hon’ble Apex Court held as follows:-

“159. The rampant increase in unauthorised constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities.

160. From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire,

garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations — the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law.

In ***Friends Colony Development***

Committee v. State of Orissa reported in **(2004) 8**

SCC 733, the Hon'ble Apex Court dealt with a case

where the builder had exceeded the permissible

construction under the sanctioned plan and had

constructed an additional floor on the building,

which was unauthorised. The Apex Court held as

follow:-

“24. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk,

inconvenience and hardship which is posed to the occupants of the building.”

In **Priyanka Estates International (P) Ltd. v. State of Assam** reported in **(2010) 2 SCC 27**, the Apex Court observed that if unauthorised constructions were allowed to stand or were “given a seal of approval by Court”, it was bound to affect the public at large.

In **Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai** reported in **(2013) 5 SCC 357**, the Hon’ble Apex Court observed as follows:-

“8. At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their hands and get away with it.”

In the matter of **Supertech (Supra)**, the Hon’ble Apex Court discussed the duties of the civic bodies and lamented the sorry state of affairs as under:-

“167. The Court further observed that an unauthorised construction destroys the concept of planned development, and places an unbearable burden on basic amenities provided by public authorities. The Court held that it was imperative for the public authority to not only demolish such constructions but also to impose a penalty on the wrongdoers

involved. This lament of this Court, over the brazen violation of building regulations by developers acting in collusion with planning bodies, was brought to the forefront when the Court prefaced its judgment with the following observations : (Esha Ekta Apartments case [Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai, (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89], SCC p. 363, para 1)

“1. In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal constructions by way of compounding and otherwise.”

168. Finally, the Court also observed that no case has been made out for directing the municipal corporation to regularise a construction which has been made in violation of the sanctioned plan and cautioned against doing so. In that context, it held : (Esha Ekta Apartments case [Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai, (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89] , SCC pp. 394-95, para 56)

“56. ... We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas.”

169. These concerns have been reiterated in the more recent decisions of this Court in Kerala State Coastal Zone Management Authority v. State of Kerala [Kerala State Coastal Zone Management Authority v. State of Kerala, (2019) 7 SCC 248] , Kerala State Coastal Zone Management Authority v. Maradu Municipality [Kerala State Coastal Zone Management Authority v. Maradu Municipality, (2021) 16 SCC 822 : 2018 SCC OnLine SC 3352] and Bikram Chatterji v. Union of India [Bikram Chatterji v. Union of India, (2019) 19 SCC 161] .”

The order impugned is not interfered with.

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.)