

12.04.2023
Court No. 19
Item 39 (DL)
SRM/CP/SB

WPA No. 2948 of 2023

**Rajkumar Sashmal
Versus
The State of West Bengal & Ors.**

Mr. Kamalesh Bhattacharya
Mr. Aninda Bhattacharya

... for the Petitioner.

Mr. Susanta Pal,
Ms. Ananya Neogi

... for the State.

Mr. Tanmoy Mukherjee,
Mr. Kamal Mishra
Mr. Rudranil Das
Mr. Pratap Sanfui
Mr. Subhadeep Maitra

... for the Respondent No. 11.

The petitioner has challenged the order of the Sub-Divisional Officer, Egra dated January 11, 2023. In exercise of powers under Section 23(5) of the said Act, the authority came to a finding that no plan had either been approved or sanctioned by the gram panchayat. No permission had been granted to the petitioner by the gram panchayat, permitting such construction. As no application in the prescribed form along with the prescribed fees had been deposited in the office of the Bibhisanpur Gram Panchayat, the authority also held that the question of deemed sanction would not arise.

The petitioner was directed to dismantle/demolish the entire construction on Plot No. 4 of Mouza – Paschim Masuria, JL No. 111 within one month from the date of the order. On failure of the petitioner to implement the order, the Pradhan, Bbhhisampur Gram Panchayat was directed to take necessary help from the Block Land & Land Reforms Officer, Bhagawanpur – I Block as also the Officer-in-Charge, Bhagawanpur Police Station for demarcation and demolition of the construction, thereby restoring the land to its original position.

Mr. Bhattacharya, learned advocate for the petitioner, submits that the authority failed and neglected to take into consideration the application in the prescribed form which has been annexed to the writ petition at pages 44 to 46, the plan/drawing of the proposed structure which is at page 48 of the writ petition and the permission that was granted on January 9, 2017 which is at page 47 of the writ petition. Relying upon page 47 of the writ petition, Mr. Bhattacharya submits that in the 10th meeting of the gram panchayat held on December 29, 2016, such permission was granted.

Next contention of Mr. Bhattacharya is that the money was also deposited, but the money receipt had not been granted. Learned Advocate has relied on several letters written by the Block Development

Officer to the concerned Pradhan asking the authority to take action on the basis of the complaint of the petitioner that the money receipt had not been provided, although the petitioner had deposited Rs.1500/-.

The fact that the petitioner had been approaching the authorities since 2017 with regard to the sanction/permission and the Block Development Officer repeatedly directed that the matter be looked into by the Pradhan, proves that the petitioner had submitted all the documents as per law and the sanction on January 9, 2017 had been granted in terms of Section 23(1) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act), at the meeting of the gram panchayat dated December 29, 2016.

Further argument is advanced by Mr. Bhattacharya by controverting the contents of the documents filed by the Block Development Officer and the Sub-Divisional Officer, annexed to their reports. Mr. Bhattacharya vehemently urges the court to come to a conclusion that the minutes of the 28th meeting of the gram panchayat held on December 29, 2016, had been interpolated and manufactured. Had the originals of the same been produced before the court, the truth would be unearthed.

Mr. Bhattacharya submits that the present Pradhan of the gram panchayat had issued a certificate to the effect that the authority did not have any objection if the petitioner raises a construction on Plot No. 4 of Mouza – Paschim Masuria. Such declaration was signed by the present Pradhan on September 29, 2020. Relying on the said document, Mr. Bhattacharya further contends that the present Pradhan could not retract from such declaration and be pressurised to make a contrary statement before the Sub-Divisional Officer to the effect that no permission had been granted to the petitioner for the alleged construction.

Referring to the opposition filed by the petitioner, in response to the reports of the respondent nos. 5 and 6, Mr. Bhattacharya submits that as the hand writings in the resolutions differ, no credence can be attached to the same.

Further contention of Mr. Bhattacharya is that the number of the meeting had been interpolated subsequently, in order to deprive the petitioner from taking advantage of the decision adopted in the 10th meeting of the Gram Panchayat, which was held on December 29, 2016. A resolution had been adopted in the said meeting to grant sanction in respect of the construction of the petitioner.

According to Mr. Bhattacharya, reference to the 7th meeting and 9th meeting which have been annexed to the said opposition, would indicate that permissions had been granted by the panchayat authorities to other persons around the same time in the 4th and 7th meetings of the gram panchayat and chronologically in 10th meeting, to the petitioner. The dates are relevant as those meetings were held in close succession.

Hence, Mr. Bhattacharya urges the Court to set aside the order of demolition and accept the correctness of the documents filed by the petitioner, by ignoring the reports.

Mr. Mukherjee, learned advocate appears on behalf of the complainant at whose instance the entire proceedings had been initiated. Determination of the issue of unauthorized construction and the order of demolition had been passed on the basis of such complaint. Learned Advocate denies the contentions of the petitioner.

Reliance is placed on several documents in the writ petition to point out that contradictory stands were taken at different stages. The petitioner had submitted that the permission had been granted on January 9, 2017. In another document, the petitioner had stated that money had been deposited on January 9, 2017. In some other places, the

petitioner had mentioned that the documents were deposited on December 24, 2016 and also on December 29, 2016.

Relying on the above contradictions in the dates mentioned by the petitioner, Mr. Mukherjee submits that if the petitioner's contention that the money was deposited on January 9, 2017 is correct, decision to grant permission could not have been taken on December 29, 2016. As per the provision of Rules 17 and 18 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 the application, plan/map and the money should have been deposited all at once, to enable the gram panchayat to take a decision.

Mr. Mukherjee draws the attention of the Court to an order passed by a Co-ordinate Bench of this Court in order to highlight the contradictory stand of the Pradhan, with regard to grant of sanction. Further, statements of the Secretary of the Gram Panchayat and the erstwhile Pradhan are relied upon to show that fees in the prescribed form had never been submitted.

Mr. Mukherjee further submits that when two independent authorities had come to a factual finding with regard to non-grant of sanction upon perusal of the resolution book and other documents, the Writ Court cannot either sit in appeal or as a fact

finding Court, to adjudicate the evidentiary value of such records. Learned Advocate further submits that the prayer of the petitioner for production of the records of the Gram Panchayat office in this proceeding, should not be entertained. There are factual findings with regard to non-existence of sanction, non-existence of any permission and non-deposit of any money in the prescribed form for grant of sanction. Further enquiry into the facts, by a writ court, is not warranted.

Mr. Mukherjee submits that the resolution book was consulted by the Block Development Officer. Learned Advocate submits that the Secretary and the Pradhan of the Gram Panchayat on an earlier occasion had informed the Sub-Divisional Officer and also a Co-ordinate Bench of this Court, that no permission had been granted to the petitioner to raise any construction.

On March 1, 2013, when this writ petition was moved for the first time before this Court, the Pradhan retracted from the earlier submission and stated through his learned advocate that sanction had been granted on January 9, 2017. Finding such contradictory stand of the Pradhan to be utterly shocking, this Court once again directed the Block Development Officer, Bhagwanpur-I Block, and the

Sub-Divisional Officer, Egra to make an enquiry and also record statements of the parties with regard to correctness of the statements made by the present Pradhan at different stages of the litigation..

The Writ Court deemed it fit that the factual aspects should be ascertained and the contradictions which had transpired during the course of hearing on the first day, should be answered. On April 11, 2023 the reports were filed by the Block Development Officer and the Sub-Divisional Officer through Mr. Susanta Pal, learned advocate who represented the State respondents.

Mr. Pal submits that the Block Development Officer asked for the records of the gram panchayat, including the resolution book, and recorded the statements of the erstwhile Pradhan Kajal Shaw under whose signature the resolution dated December 29, 2016 had been purportedly adopted and the permission had been purportedly issued on January 9, 2017. The contentions of the present Pradhan were recorded. The erstwhile Pradhan denied the signature. The resolution book was consulted and it was found that nothing was available from the records which would suggest that permission in the prescribed form had either been granted or sanctioned in favour of the petitioner. The permission dated January 9, 2017 was not found to

be invalid. The question whether the petitioner had actually deposited the money, remained unanswered. No receipts could be found. The contentions of the petitioner were not proved as there was nothing on record to show that money has been deposited. Both the Pradhans had denied the fact that a permission had been granted on January 9, 2017. The petitioner as also the respondent no.11 were present at the hearing held by the Block Development Officer. The statements of the Pradhan, and the Sahayak, were obtained in writing.

Referring to the report of the Sub-Divisional Officer, Mr. Pal submits that all the documents which have been annexed to the report of the Sub-Divisional Officer indicate that no permission had been granted and no money had been deposited by the petitioner for such purpose. The written declaration by the erstwhile Pradhan and the present Pradhan, have been relied upon.

Further reliance is placed on a letter dated October 20, 2021 issued by the Pradhan of Bibhisampur Gram Panchayat to the Officer-in-Charge, Bhagwanpur Police Station requesting the authority to stop the unauthorized construction. The report of the Secretary, Bibhisampur Gram Panchayat submitted before the Sub-Divisional Officer on June 21, 2022 stating that the question of deemed

sanction would not arise in the absence of an application in the prescribed form upon deposit of prescribed fees, have also been pointed out.

Heard the learned Advocates for the parties.

In view of the contradictory stand of the Pradhan, the Court thought it fit that a factual enquiry should be made. Accordingly, the Court directed the Block Development Officer, Bhagwanpur-I Development Block and the Sub-Divisional Officer, Egra to file separate reports upon obtaining the statements from the Secretary and the two Pradhans of the Gram Panchayat.

When the factual aspects have been satisfactorily answered by the State respondents in the form of reports, the Court can safely proceed with such findings without converting itself to a trial court.

Power of judicial review can be invoked to determine whether the decision making process of an authority is free from bias, bona fide and in accordance with law.

Objecting to the unauthorized construction by the petitioner, WPA 10917 of 2020 was filed before this Court and a learned Co-ordinate Bench disposed of the writ petition on February 9, 2021 directing the respondent Bibhisampur Gram Panchayat to take steps in the matter in accordance with law, upon

granting an opportunity of hearing to the parties. Certain observations were made in the said order of the learned Co-ordinate Bench on some factual aspects, which require reference.

For convenience, the relevant portions are quoted below:

“The petitioner had applied before the Pradhan of the Gram Panchayat seeking information as to whether any permission was given for making the construction in the said plot of land. The Secretary of Bibhisampur Gram Panchayat by a communication dated 9th November, 2020 has intimated the petitioner under the Right to Information Act that the Panchayat did not grant any permission for making the said construction. On receipt of the aforesaid information the petitioner applied once again before the Panchayat for demolition of the unauthorized construction. The petitioner alleges that the representation has not been considered by the respondent authority till date.

None appear on behalf of the Gram Panchayat despite service.

The learned advocate representing the State respondent submits, upon instruction, from the Block Development Officer, Bhagwanpur Block-I Development Block that no permission has been issued for constructing the house of the said Gram Panchayat from the Panchayat Authority.

As it appears that the construction which is being made is continuing without obtaining any sanction plan from the Panchayat, it will be appropriate to direct the respondent No.6 being the Bibhisampur Gram Panchayat through the Pradhan being the respondent No.7 to take immediate appropriate steps against the aforesaid illegal construction which is being made without obtaining any sanction plan from the Panchayat.

Pursuant to the order passed by the learned co-ordinate Bench, proceedings were initiated by the

panchayat authorities, which ultimately resulted in reference of the entire matter to the Sub-Divisional Officer, Egra for steps under Section 23(5) of the said Act. By an order dated August 10, 2022, the Sub-Divisional Officer directed the petitioner to remove some parts of the construction, *inter alia*, holding that when the construction had been carried out with the knowledge of the gram panchayat, the same deserved to be ratified. Such order was challenged by the respondent No.11 in WPA 22579 of 2022. This Court found that the Sub-Divisional Officer had misconstrued the scope of Section 23(5) of the said Act and directed the authority to decide the following points:

- “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”

The order of this Court was passed on November 21, 2022. The Court further directed that on the basis of the findings on the above points, the authority shall pass a reasoned order and take necessary steps in case the issues framed in the said order would go against the petitioner. The parties

appeared before the Sub-Divisional Officer. The petitioner filed his written notes of arguments. In paragraph 2(a) of the said written notes, the petitioner stated that the application for sanction was duly filed on December 20, 2016 in Form 4. After the form was filed, the building plan and other necessary papers were deposited on December 29, 2016 and thereafter the permission was granted on January 9, 2017. The fees were assessed by the panchayat authorities as Rs.1,500/- and the same was paid in cash on January 9, 2017. The Pradhan did not tender the receipt to the petitioner. The petitioner approached the authorities and the Block Development Officer time and again for a copy of the receipt, which was never tendered to the petitioner.

The discrepancies in the dates are apparent. At some places the petitioner has stated that the application was filed on December 24, 2014 and in the written notes, it has been stated that the form was deposited on December 20, 2016. The building plan and other papers were deposited on December 29, 2016 and the cash was deposited on January 9, 2017. The consistent stand of the petitioner is that the permission was granted on the basis of a resolution adopted on December 29, 2016 which was communicated by an official letter in the prescribed form on January 9, 2017. The erstwhile Pradhan

denied such fact and also the signature in the document dated January 9, 2017.

This submission of the petitioner appears to be contrary to law as the gram panchayat could not have processed the application form of the petitioner on December 29, 2016, if the fess were not deposited along with such application and the sketch/plan. The panchayat authorities could not have adopted a resolution on December 29, 2016 as the petitioner admittedly did not deposit the cash until January 9, 2017. Even assuming that the contention of Mr. Bhattacharya with regard to the deposit of money is correct and the Pradhan had intentionally withheld the money receipt, the decision to grant permission could not have been taken before the money had been deposited.

The Block Development Officer has produced the letter written by the erstwhile Pradhan dated March 16, 2023, by which the signature on the document dated January 9, 2017 purported to be the permission, had been denied. The resolution copy of December 29, 2016 was placed before the Block Development Officer. The same does not deal with grant of sanction to the petitioner's construction. A copy of the same, has been annexed to the report. The letter written by the present Pradhan dated March 17, 2023 also indicates that no construction

was permitted either on January 9, 2017 or at any point of time by the said gram panchayat, in favour of the petitioner. The Secretary intimated the Block Development Officer that the DCR (Money Receipt) Book was missing, but the ledger was consulted and it was found that no money had been deposited by the petitioner.

After the enquiry with reference to the documents produced by the gram panchayat and considering the statements of the two Pradhans and the Secretary, the Block Development Officer came to the following conclusion:

- “1. The erstwhile Pradhan denied the authenticity of the permission issued on 09.01.2017 and stated that it was not her signature.
2. The issuance of permission on 09.01.2017 cannot be justified by official issuance of money receipt.
3. That on the resolution date mentioned in the permission i.e December 29, 2016, being meeting No.-10 No decision was taken for issuing any permission to Rajkumar Sashmal. The meeting number mentioned in the permission also wrong, the actual meeting number will be 28 of 29.12.2016 instead of 10 of 29.12.2016.
4. That Pradhan confirms his stand to the undersigned that no such permission was issued in favor of Rajkumar Sashmal, whatever statement felt contradictory to the honourable high court was because lack of his communication.”

The petitioner, the respondent No.11, two Pradhans, Upa-Pradhan, Sahayak, and some others

were present before the Block Development Officer with the records.

It appears from the proceedings of the hearing that the Block Development Officer verified the gram panchayat's resolution 'khata' and found that no resolution had been adopted on December 29, 2016, which was meeting No.10. The gram panchayat had decided to grant sanction to the petitioner's construction.

The attendance sheet and all other documents are before the Court. The petitioner was present during such proceedings. The resolutions were produced before the Block Development Officer in the presence of the petitioner. The notices which were sent to the petitioner by the Block Development Officer, are on record.

The Sub-Divisional Officer has filed a report and has stated the following:-

"In compliance with the Order dated 01.03.2023 of Hon'ble Calcutta High Court, I, Samrat Mondal, Sub Divisional Officer, Egra is submitting herewith report containing all the documents in Annexures which were placed before the authority during the entire course of the proceedings which led me to arrive at the finding that there was no sanction by the authority for constructing building."

The statement of the erstwhile Pradhan dated May 30, 2022 when she personally appeared before the Sub-Divisional Officer and gave a declaration

that she had not permitted the petitioner to raise a construction and the copy of the reply given by the Secretary and SPIO of the gram panchayat declaring that no permission was granted for a construction to the petitioner, have been annexed to the report.

The letter dated January 4, 2023 written by the present Pradhan to the Sub-Divisional Officer, denying permission and the letter written by the Pradhan to the police station asking the police authorities to stop the unauthorised construction, were all filed before the authority.

On the basis of those documents, the Sub-Divisional Officer in exercise of power under Section 23(5) of the said Act, had come to a finding that no permission had been granted to the petitioner for construction and the petitioner was directed to demolish the unauthorized construction.

On the basis of the above factual findings and the documents which have been discussed hereinabove, as also taking into account the anomalies in the submissions of the petitioner, this Court is of the view that the factual aspects which have been already decided by the authority need not be re-visited as there are specific letters by the two Pradhans and the Secretary that permission had not been granted to the petitioner for raising the aforementioned construction. The carriage of

proceedings is in the hand of the petitioner. The petitioner has not been able to show that the plan or sketch map had been sanctioned by the authorities. The plan annexed to the writ petition, does not bear any official stamp and signature of the pradhan. The erstwhile Pradhan has denied the signature on the document dated January 9, 2017.

Thus, the order of the sub-divisional officer is not contrary to law.

Under such circumstance, the writ petition is dismissed without any interference.

The further plea of the present Pradhan that although the construction was unauthorized the same could be regularized by subsequent ratification, is completely contrary to law and cannot be given any importance.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)