

Item No.39  
01.03.2023  
Court. No. 19  
GB

WPA 3260 of 2023

Sri Narayan Middey  
Vs  
The State of West Bengal & Ors.

*Mr. Sreyash Basu Dasgupta*

*...for the Petitioner.*

*Mr. Rohit Das,  
Ms. Kishwar Rahman*

*...for the Respondent No.3.*

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

The petitioner prays for reconsideration of the order of demolition dated January 13, 2023 passed by the Sub-Divisional Officer, Uluberia, Howrah. The said order was passed pursuant to a direction of this Court in WPA No.25340 of 2022. The Sub-Divisional Officer in exercise of power under Section 23(5) of the West Bengal Panchayat Act, 1973 arrived at the following conclusion:-

*“I hereby direct Sri Narayan Middey, son of Late Dinabandhu Middey, residing at Village & P.O. Birshibpur, Police Station: Uluberia, District: Howrah – 711316 to demolish the unauthorized structure constructed over the suit land immediately within Fifteen Days from the date of Communication of this order, failing which the Pradhan, Maheshpur Gram Panchayat, Uluberia-I Block, Howrah will fix up a date immediately thereafter to demolish the structure, in close consultation with the Block Development Officer, Uluberia-I Block, Howrah & Inspector-in-Charge, Uluberai Police Station, Howrah (Rural) District, taking necessary assistance from the local Police and Civil administration as and when required in order to comply with the order of the Hon’ble High Court at Calcutta in this regard.*

*A compliance report is to be submitted by the Pradhan, Maheshpur Gram Panchayat, Uluberia-I Block, Howrah through the Block Development Officer, Uluberia-I Block, Howrah to this end by 20.03.2023 accordingly."*

Admittedly, the petitioners did not apply for permission before the concerned permission granting authority, namely, Maheshpur Gram Panchayat in terms of Section 23(1) of the West Bengal Panchayat Act, 1973 and Rules framed thereunder. Section 23(1) of the West Bengal Panchayat Act, 1973 reads as follows:-

*"23. Control of building operations.- (1) No person shall erect any new structure or building or make any addition to any structure or building having plinth area of not more than 150 square metres and height not more than 6.5 metres in any area within the jurisdiction of a Gram Panchayat except with the previous permission in writing from the Gram Panchayat.*

*Provided that where the State Government or an authority or agency under the State Government intends to set up or has set up an industrial estate or industrial park within the jurisdiction of a Gram Panchayat, permission for erection of any structure or building or any addition to the structure or building for setting up an industry within such industrial estate or industrial park, shall be obtained from such authority or industrial development authority or corporation as the State Government may, by notification, specify:*

*Provided further that such erection of a new structure or a new building or such addition to any structure or building or such permission from the Gram Panchayat shall be subject to such rules as may be made by the State Government in this behalf:*

*Provided also that a Gram Panchayat shall not accord permission for erection of a new structure or construction of a new building, if the proposal for such erection or construction, as the case may be,-*

*(a) has any provision for erection or construction of any dry latrine, by whatever name called, and*

(b) *does not have any provision for erection or construction of a sanitary latrine of any description."*

If no permission is granted, the authority can take steps in accordance with Section 23(5) of the West Bengal Panchayat Act, 1973. Section 23(5) of the West Bengal Panchayat Act, 1973 reads as follows:-

*23.(5) Where any new structure or new building or any addition to any structure or building is being or has been erected or made, as the case may be, in contravention of the provisions of sub-section (1), the permission granting authority shall refer the matter to the Sub-Divisional Officer concerned who may after giving the owner of such building an opportunity of being heard, make an order directing the demolition of the building or a portion of the building, as the case may be, by the owner within such period as may be specified in order and in default, the Sub-Divisional Officer may itself effect the demolition and impose a fine as may be specified by the State Government and recover the cost thereof from the owner as a public demand."*

The Panchayat Act does not provide for post facto approval of an unauthorized structure. In any event, till now the petitioner did not apply for any permission under the law in terms of Section 23 read with Rule 17 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004.

Under such circumstances, the writ petition is disposed of without any orders in favour of the petitioner.

If the petitioner complies with the order of the Sub-Divisional Officer, Uluberia, Howrah and demolishes the unauthorized structure, the petitioner shall be entitled to approach the authority in future, for permission in

accordance with law. The Pradhan, Maheshpur Gram Panchayat shall ensure compliance of the order of demolition.

In the matter of ***Dipak Kumar Mukherjee v. Kolkata Municipal Corpn.*** reported in ***(2013) 5 SCC 336***, the Hon'ble Apex Court 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.

In ***Priyanka Estates International (P) Ltd. v. State of Assam*** reported in ***(2010) 2 SCC 27*** the Hon'ble Apex Court, observed as follows:-

“55. It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.”

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:-

“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.”

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.)**