

16.03.2023
Court No. 19
Item no.28
CP

W.P.A. No. 3397 of 2023
Sk. Matibul Rahaman & anr.
Vs.
The State of West Bengal & Ors.

Mr. Robiul Islam
Sk. Jayed Hossain

....for the petitioners.

Mr. R. Mahato
Mr. A.S. Ray

....for the respondent nos. 10 to 12.

Mr. Manoj Malhotra
Mr. Suman Dey

....for the State.

Despite service none appears on behalf of the
zilla parishad.

The petitioners seek implementation of the
order passed by the District Engineer, Paschim
Medinipur Zilla Parishad dated January 19, 2023 on
the basis of the order of this court. The District
Engineer, Paschim Medinipur Zilla Parishad held an
inspection of the premises in question and arrived at
certain findings with regard to deviations. The
petitioners submit that pursuant to such finding the
respondent nos. 10 to 12 were asked to demolish the
deviations and take corrective measures. The
Additional District Magistrate & Additional Executive

Officer, Paschim Medinipur Zilla Parishad had also directed the respondent nos. 10 to 12 to implement the order of the District Engineer by correcting the deviations and demolishing the constructions which were beyond the permission.

Mr. Mahato, learned advocate for the respondent nos. 10 to 12, submits that the order of the District Engineer cannot be implemented as there are factual irregularities and the measurements are erroneous.

The control of building operations under Section 160A which was incorporated by an amendment in 2017 in the West Bengal Panchayat Act, 1973 (hereinafter referred to as 'the said Act'), prescribes a procedure in Sub-Section (6), which is to be followed if deviations or unauthorized constructions are detected in respect of those constructions of which the Zilla Parishads are the permission granting authority. Sub-Section (6) of Section 160A of the said Act is quoted below:

160A. Control of building operations. –

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(6) 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 provision of sub-section (1), the matter shall be heard by a hearing officer who shall preferably be a retired senior Government Officer with the experience of having worked as a Magistrate and shall be appointed in the Zilla parishad by

the State Government. The hearing officer shall, after giving the owner of such building an opportunity of being heard, submit his recommendation to the Executive Officer of the Zilla Parishad. The Executive Officer of Zilla Parishad shall take decision for 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, issue direction to the Sub-Divisional Officer concerned to effect the demolition and to recover the cost thereof from the owner as a public demand. In case of any difference of opinion between the Executive Officer of the Zilla Parishad and the hearing officer, the matter shall be referred to the Additional Chief Secretary or the Principal Secretary or the Secretary of the State Government for final disposal.”

Mr. Dey, learned advocate for the State respondents has handed over certain documents and a statement of facts prepared by the District Engineer, Paschim Medinipur Zilla Parishad. In view of the amendment of the said Act, the procedure now to be followed by the zilla parishad has been clarified as hereinabove. The findings of the District Engineer will be considered to be the inspection report. The petitioners and the respondent nos. 10 to 12 shall file their versions to the said report. Mr. Dey has already handed over a notification issued by the Secretary to the Government of West Bengal, Panchayats & Rural Development Department dated February 24, 2023, by which the Governor has been pleased to order that the District Magistrates of the Districts who are also the executive officers of the zilla parishads shall appoint a hearing officer in

accordance with the provisions of law who shall preferably be a retired senior government officer with experience of having worked as a Magistrate for disposal of the cases where new structures or buildings had been erected or made in rural areas and in respect of which the zilla parishad was the permission granting authority.

In this case, the court is not sure whether the hearing officer has been appointed or not. The court does not find that the hearing officer has been entrusted to continue with the hearing of this matter after the findings of the District Engineer.

Under such circumstances, the writ petition is disposed of with the following directions:

- a) The parties are at liberty to respond to the order of the District Engineer which shall be treated as an inspection report.
- b) The District Magistrate who is also the Executive Officer of the Paschim Medinipur Zilla Parishad shall appoint a hearing officer for this case within a period of three weeks in terms of the order dated February 24, 2023 by maintaining the required qualification as has been provided in the statute, if not already done.
- c) The hearing officer shall continue with the hearing of the matter and pass necessary

orders in terms of Section 160A of the said Act.

- d) Adequate opportunity shall be given to the parties to file further written statements and adduce oral and documentary evidence.
- e) A reasoned order shall be passed and communicated and, thereafter, steps shall be taken in accordance with law if unauthorized constructions are detected.

The procedure for demolition has also been mentioned in Section 160A, Sub-Section (6) and such procedure shall be adhered to.

The entire exercise shall be completed within a period of six weeks from appointment of the hearing officer, if not already done.

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.)