

Item No.7
10.04.2023
Court. No. 19
sn

WPA 6186 of 2023

Lions Club of Jamalpur Welfare Trust,
Represented by Sri Debdutta Ray & Ors.

Vs

The State of West Bengal & Ors.

Mr. Debabrata Saha Roy,
Mr. Neil Basu,
Mr. Rahul Kr. Singh,
Mr. Tapojit Das,
Mr. Sankha Biswas

...for the Petitioners.

Mr. Manoj Malhotra,
Mr. Suman Dey

...for the State.

Mr. Devajyoti Barman,
Ms. Sanjukta Basu Mallick

...for the Respondent No.9.

Mr. Sayan Chattopadhyay,
Mr. R. Ali

...for the Respondent No.11.

Having perused the report filed by the respective parties, this Court is of the view that the issue can be resolved if the petitioners are in a position to satisfy the authority that a G+IV storeyed building had been sanctioned.

The panchayat authorities have stated that a house was permitted. There are no records, which would indicate that any map or plan had either been filed or sanctioned by the panchayat. The permission granted by a letter and the minutes book has been filed.

The Sub Divisional Officer has filed a statement of facts which indicate that the panchayat authorities could not submit any case records. On the other hand, there were discrepancies in the statement made by the Pradhan before the said authority.

The Sub Divisional Officer had directed the parties to go back with proper documents. The next date fixed by the Sub Divisional Officer is April 20, 2023. The petitioners are entitled to place the sanctioned plan which was allegedly sanctioned by the gram panchayat some time in 2011 before the SDO. The records produced by the panchayat authorities does not indicate that any plan had been filed for grant of sanction.

The records and the original resolution book indicate that on June 24, 2011, the gram panchayat in its 2nd meeting had adopted a resolution to grant permission to the petitioners for construction of a house/building written as “Griha”. However, the height and measurements of the building is not available.

Coming to know of the contempt proceedings pending before the Court, a meeting was held by the petitioners. The resolution of the meeting reveals that a new building of Lions Club of Jamalpur Welfare Trust had been declared unauthorized by the Pradhan. On such observations of Jamalpur-2 gram panchayat, the chairman requested the members to give their opinions and to finalize the future course of action. It appears that in the hand written application “haspatal bari” had been mentioned by the petitioners but in their receipt showing payment of fees, it was mentioned as fees for ‘house construction’. It appears that the petitioners claim to have submitted two copies of the plan along with the application. The permission mentioned “Griha Nirman”.

As per the records no sanction for a G+IV storeyed building was available.

It is further submitted by the petitioners that the panchayat authorities were themselves not sure of their stand and had made contradictory statements before the Court and before the Sub Divisional Officer. The Sub Divisional Officer recorded the same.

A Co-ordinate Bench of this Court had already observed that the concerned Sub Divisional Officer should act in terms of Section 23 of the West Bengal Panchayat Act, 1973. Section 23(5) of the said Act is quoted below:-

“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”.

Thus, the authority is also bound to dispose of the allegation of unauthorized construction. The findings of the panchayat authorities are that the construction if part of the building was illegal. Now, steps have to be taken by the Sub Divisional Officer in terms of Section 23(5) of the West Bengal Panchayat Act, 1973.

The documents, which have been produced before the Court by all parties, shall be produced before the concerned

Sub Divisional Officer at the time of hearing. A copy of the same shall be transmitted prior to the next date fixed. All parties are entitled to attend the hearing. Liberty is granted to the petitioners to file better documents including the sanctioned plan, before the Sub Divisional Officer. The Sub Divisional Officer shall act and proceed in accordance with law. All points raised by the petitioners shall be available before the concerned authorities. The age of the construction shall be ascertained by employing a team of engineers. The engineers will file a report and hand over the same to the parties.

Thus, the issue has to be gone into in further details with regard to actual sketch/plan which had been allegedly submitted before the panchayat authorities for sanction.

The authority will decide the issue, independently. This court has not taken any decision but has observed the facts which transpire.

This writ petition is disposed of.

There will be, however, no order as to costs.

The Statement of facts filed by the Sub Divisional Officer, Bardhaman Sadar(South), purba Bardhaman is taken on record.

All parties are directed to act on the server copy of this order.

(Shampa Sarkar, J.)