

D/L  
Item No 08  
12.06.2023  
KOLE

**MAT 486 of 2023  
With  
IA No. CAN 1 of 2023**

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

*Mr. Purnasish Gupta,  
Mr. Jayanta Kr. Mukhopadhyay,  
Mrs. Sruti Dey,*

*...for the appellant.*

*Mr. Bibek Jyoti Basu,  
Mr. B. Ahmed,*

*...for the State.*

*Mr. Rohit Das,  
Ms. K. Rahman,  
Mr. P. Majumdar,*

*...for the respondent no. 3.*

By consent of the parties the appeal and the application are taken up for hearing together.

A judgment and order dated March 1, 2023, whereby the appellant's writ petition was in effect dismissed, is under challenge in this appeal.

It appears that the appellant made a construction of a one storeyed building for the purpose of residing therein. However, prior to constructing the building, he did not seek permission from the concerned authority being the Maheshpur Gram Panchayat. After the construction was completed, vide a letter dated January 6, 2023, addressed to the Pradhan of the said Gram Panchayat, the appellant sought post facto permission of the Panchayat. Such request of the appellant was turned down by the Pradhan by observing that since the construction has already been

completed without obtaining prior permission, the request for permission is rejected.

It further appears that a demolition order dated January 13, 2023 was passed by the Sub-Divisional Officer, Uluberia, Howrah, pursuant to a direction by a learned Judge in WPA 25340 of 2022. By the said order, the Sub-divisional Officer, in exercise of his power under Section 23(5) of the West Bengal Panchayat Act, 1973, called upon the appellant to demolish the unauthorized structure within 15 days from the date of communication of the order, failing which the Pradhan of the concerned Gram Panchayat was directed to fix a date for demolition of the structure and to demolish the same if necessary by taking police assistance. The Sub-divisional Officer directed the Pradhan of the concerned Panchayat to file a compliance report.

Assailing the Sub-divisional Officer's demolition order dated January 13, 2023, the appellant approached the learned Single Judge in the present round of litigation.

The learned Judge noted that admittedly the writ petitioner did not apply for permission before the concerned permission granting authority, i.e., Maheshpur Gram Panchayat, in terms of Section 23(1) of the 1973 Act and the Rules framed thereunder. The learned Judge further observed that the Panchayat Act does not provide for post facto approval of an unauthorized structure. In any event, the writ petitioner had not applied for permission under the law in terms of Section 23 read with Rule 17 of the West Bengal (Gram Panchayat Administration) Rules, 2004. With

those observations, the learned Judge disposed of the writ petition without passing any order in favour of the writ petitioner.

Being aggrieved, the writ petitioner has come up by way of this appeal.

Learned Advocate for the appellant says that it is the discretion of the Sub-divisional Officer under Section 23(5) of the Panchayat Act as to whether or not to order demolition of an unauthorized structure. Post facto regularization of a construction made without prior permission of the concerned authority, is permissible in law. The appellant belongs to the weaker section of the society and was compelled to make the construction for using the same as residence for himself and his family. His case should be considered sympathetically. There are several instances where the Panchayat had not taken any action against unauthorized construction. Learned Advocate says that the Sub-divisional Officer should re-consider his demolition order in the light of the aforesaid circumstances.

Learned Advocate for the appellant also relied on an order dated November 23, 2017 passed by a Coordinate Bench in MAT 2007 of 2013 (**Sumitra Kanrar-vs.-Sanjit Jana & Ors.**) in support of his submission that post facto sanction can be granted by the permission granting authority in respect of unauthorized construction. We have gone through that order. Firstly, there is no discussion in the order as to whether or not the permission granting authority can accord post facto sanction under the provisions of the

Panchayat Act, 1973. Secondly, the court only recorded the submission made on behalf of the Howrah Zilla Parishad that it had regularized the construction in question. Thirdly, bye-laws 15 of the Howrah Zilla Parishad permitted post facto regularization as recorded in the said order. That order therefore, in our opinion does not come to the aid of the present appellant in any manner.

We have also heard Mr. Basu, learned Advocate for the State, who vehemently opposes the prayer made by the appellant. He says that a citizen cannot take law into his own hands. The law required the appellant to obtain prior permission before he made the impugned construction. He did not care to do so. He applied only after completing the construction. This is not what is envisaged under the applicable law. No leniency should be shown to a person who consciously flouts the law of the land.

We have given our anxious consideration to the rival contentions of the parties. We see no infirmity in the order under appeal. Admittedly, the appellant did not obtain or even apply for prior permission of the Gram Panchayat. He merrily went ahead and raised the construction which is completely unauthorized. He may have had pressing need for residential accommodation but that did not give him the license to take law into his own hands and build a house without even bothering to seek permission from the relevant statutory authority. We have no sympathy for a person who does not have respect for the law of the land. Rule of law must prevail at all costs. Otherwise, there will be total

anarchy. Sympathy cannot be the basis for passing order in a court of law.

The grievance of the appellant that there are other cases of unauthorized construction in which the Panchayat has not taken any step, may be addressed at a different level. In any event, if a few persons have managed to escape the rigors of law wrongfully, that would not entitle the other members of the society to commit the same wrongful act. Article 14 of the Constitution of India does not contemplate negative equality.

In view of the aforesaid, we are not inclined to interfere with the order under appeal.

The appeal and the connected application are, accordingly, dismissed.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

**(Arijit Banerjee, J.)**

**(Rai Chattopadhyay, J.)**