

Item No.3
08.05.2023
Court. No. 19
GB

WPA 6768 of 2023

Sri Rasu Santra
Vs
The State of West Bengal & Ors.

Mr. Animesh Paul

...for the Petitioner.

*Mr. Himadri Sikher Chakraborty,
Mrs. Susnita Saha*

...for the State.

Ms. Mekhla Sinha

...for the Howrah Zilla Parishad.

*Mr. Saptarshi Kumar Mal,
Mr. Kausik De,
Mr. Roshan Phatak*

...for the Respondent No.6.

*Mr. Prasenjit Barman,
Mr. Soumyajit Mandal*

...for the Respondent Nos.7 & 8.

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

The petitioner has challenged the order passed by the District Engineer, Howrah Zilla Parishad dated February 3, 2023.

The District Engineer found that the construction on R.S. Dag No.5171 corresponding to LR plot No.5274 had not been sanctioned as per law. The Assistant Engineer, Howrah Zilla Parishad had prepared a report which indicated that there was a 'Pucca' single storeyed marriage hall on one side and one CI shed on the other side of the said plot. Between the two structures, there was a connecting passage. A sketch map of the entire site was also drawn.

Having perused the said report and the sketch map and having heard the learned advocates for the respective

parties, the District Engineer disposed of the matter, inter alia, directing Chittaranjan Santra to approach the panchayat samiti for necessary sanction of his building upon submitting all necessary papers. Such direction was passed upon measuring the plinth area of the building on R.S. Plot No.5171 which was around 281.679 sq. mtrs and the height of the building which was within 6.5 metres.

Thus, although the Court had directed the Zilla Parishad to look into the matter, the Zilla Parishad was of the opinion that on the basis of the amended laws and the height and area of the building, the panchayat samiti would be the appropriate permission granting authority.

Taking note of the fact that the learned advocate for the respondent had submitted that they had got a sanction from the panchayat authorities, the Jagdishpur Gram Panchayat and the Pradhan were directed to be added as respondents. Notices were also directed to be served upon the added respondents. Today, a learned advocate appears for the said respondents and submits that on the basis of an application dated January 5, 2023 and the fees paid on January 6, 2023, the construction of a two storeyed structure along with a shed had been permitted by the panchayat authorities. The learned advocate has produced the blue print of the plan as also the application filed by the respondent no.6 seeking permission for such construction from the panchayat authorities.

The records produced by the panchayat authorities are contrary to the plan and the submissions made on behalf of the respondent no.6. The respondent no.6 has produced a copy of the plan which was allegedly sanctioned on January 5, 202s. The same bears the seal and signature of the Pradhan. The proceedings with regard to the alleged construction on L.R. Dag No.5274 which is R.S. Dag No.5171 (old), has been going on for some time. Submissions had been made on behalf of the respondent no.6 at different stages of the litigation that there was an existing construction of a marriage hall on the said plots. The Zilla Parishad found in February 2022 that an old building existed on L.R. Dag No.5274 corresponding to R.S. Plot No.5171. The construction was also found to be without any sanction, when the District Engineer passed the order impugned dated February 3, 2023.

Had the respondent no.6 been granted the sanction sometime in January 2022, such plan ought to have been produced before the District Engineer when the matter was taken up. The respondent no.6 was represented before the District Engineer, but did not show such plan.

However, as the District Engineer has categorically stated that the Zilla Parishad was not the permission granting authority as per law, the writ petition is disposed of granting liberty to the petitioner to approach the Jagdishpur Gram Panchayat with a query and for supply of documents regarding the sanction given for the construction of the respondent no.6. If such query is made in the proper form, under the Right to Information Act, a copy of the sanction

and a copy of the resolution adopted for grant of sanction the payment receipt and all necessary documents connected with the said sanction shall be supplied to the petitioner, upon the petitioner bearing the costs of such sanction. Thereafter, the petitioner shall approach the panchayat authorities with his grievances. The panchayat authorities shall enquire and find out whether the documents produced by the respondent no.6 before this Court, inter alia, stating that the sanction was given on January 5, 2022 was genuine or not and whether the construction on the plot in question was in accordance with the plan given on January 5, 2023. Further, whether the construction already existed prior to any sanction or application for sanction, shall also be determined and for such purpose, a qualified engineer deputed by the District Magistrate, Howrah shall be engaged to inspect the construction in order to ascertain the approximate age of the construction. The inspection will be made in presence of all the parties. Once the inspections are complete and the panchayat authorities come to a preliminary finding, a report shall be filed and supplied to the parties. A reasoned order shall be passed and communicated to all concerned. Thereafter, the parties shall be heard and necessary orders will be passed. The parties must also be allowed to furnish their written objection/version to the report and adduce oral and documentary evidence in support of their contentions before the competent authority. If the alleged construction is found to be prior to the plan and/or contrary to the plan

sanctioned or in deviation thereof, necessary steps shall be taken in accordance with law.

It goes without saying, that post facto sanction cannot be granted under the Panchayat Act and hence, none of the authorities under the law have the right to grant post facto sanction.

District Engineer also, did not have any authority to direct the respondent no.6 to approach the panchayat samiti for post facto sanction. Such direction in the order dated February 3, 2023 is set aside.

A copy of the plan produced before the Court, shall be handed over the learned advocate for the respondent no.6 for necessary action.

The Court has not gone into the merits of the allegations made by the petitioner, but deems it fit to relegate the entire matter to the appropriate permission granting authority for necessary steps in accordance with law, on the observations made hereinabove.

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.)