

Item No.15
26.04.2023
Court. No. 19
GB

WPA 8054 of 2023

Mohabul Sarkar @ Md. Binkashim Sarkar
Vs
The State of West Bengal & Ors.

*Mr. Mohan Kumar Sanyal,
Mr. Dwaipayan Sanyal,
Mr. Arunesh Pathak*

...for the Petitioner.

*Ms. Sima Adhikari,
Ms. Kakali Naskar*

...for the State.

Mr. Sandipan Maity

...for the Respondent No.10.

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

The petitioner submits that although the Murshidabad Zilla Parishad had sanctioned a G+2 storeyed building, the respondent no.10 had constructed a G+3 storeyed building. The Murshidabad Zilla Parishad had also issued a notice to the respondent no.10 and asked the respondent no.10 to restrict the construction to the sanction plan. Further direction was that the construction as per the sanction should be completed during the validity of the plan and there should not be any deviation.

The learned advocate for the respondent no.10 submits that the Murshidabad Zilla Parishad had verbally asked the said respondent to obtain a structural stability certificate in support of the entire construction. The intention was to obtain post facto approval.

The letter which has been produced by the respondent no.10, does not indicate that such an instruction had been given. Rather, the said respondent was asked to restrict the construction to the existing plan.

Under such circumstances, the writ petition is disposed of with a direction upon the competent authority of the Murshidabad Zilla Parishad to act and proceed in accordance with law and dispose of the representation of the petitioner which is at Pages-24 to 26 of the writ petition. The provisions of Section 160A(6) as also the existing by-laws, if any, shall be followed. The competent authority of the Murshidabad Zilla Parishad shall adopt the following procedure which disposing of the matter:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no.10. An advance notice of the inspection shall be served upon the petitioner and the respondent no.10 and on all other interested parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.
- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without any sanction and was continuing, the authorities may take such interim measures by stopping such construction.

- c) A report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.
- d) Such report shall be handed over to the parties. The question of title, possession and boundary dispute etc. shall not be decided by the panchayat authorities. The questions to be decided would be whether the construction had been made without in violation of the building rules and in deviation from the sanction plan.
- e) A hearing shall be given to the petitioner and the respondent no.10. 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. All points raised by either party, will be decided.
- f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in accordance with law.

The court has not gone into the merits of the claims of the petitioner and the issues involved shall be decided independently.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

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.)