

Item No.15
24.04.2023
Court. No. 19
GB

WPA 8136 of 2023

Suhrid Saran das
Vs
The State of West Bengal & Ors.

*Mr. Amit Baran Dash,
Ms. Ankana Sarkar*

...for the Petitioner.

*Mr. Malay Singh,
Ms. Neelam Singh*

...for the State.

Mr. Uttam Kr. Bhattacharya

...for the Respondent Nos.4 & 5.

*Mr. Dilip Kumar Samanta,
Mr. Debopriya Samanta,
Ms. Tihi Paul*

...for the Respondent Nos.13 & 14.

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

The petitioner seeks direction upon the Sub-Divisional Officer, Contai to act and proceed in accordance with the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973, and pass necessary orders for demolition of the unauthorized construction.

Mr. Samanta, learned advocate for the respondent nos.13 and 14 submits that the law provides that any construction which is less than 6.5 metres in height and less than 150 sq. mt. in plinth area, can be raised without any permission from the panchayat authorities.

This is a misinterpretation of the provisions of Section 23(1) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'said Act'). The section reads as follows:-

*“23. Control of building operation.-(1)
No person shall erect any new structure or new building or make any addition to any structure or building having plinth area of not more than 150 square metres and height not more than 6.5 metres in any area within the jurisdiction of a Gram Panchayat except with the previous permission in writing from the Gram Panchayat.”*

The Section provides that no person can raise any construction having a plinth area of not more than 150 sq. metres and height of not more than 6.5 metres in any area within the jurisdiction of a gram panchayat, except with the written permission from the gram panchayat.

By no stretch of imagination, can this provision be interpreted to mean that constructions upto 6.5 metres in height and upto 150 sq. metres in plinth area, can be raised by any person in any panchayat area, without permission. If such is the interpretation of the provision, the entire law relating to control of building operations by the panchayat authorities, would be rendered redundant. On the contrary, the law provides that constructions having height of not more than 6.5 metres and plinth area between 150 sq. metres to 300 sq. metres, will have to be permitted by the panchayat samiti and construction beyond 6.5 metres in height and 300 sq. metres and above in plinth area, shall be permitted by the Zilla Parishad. Thus, the law has categorized the permission granting authority according to the height and plinth area of the construction as hereunder:-

Height	Plinth area	Permission Granting Authority
Upto 6.5 metres	Upto 150 Sq. mt.	Gram Panchayat

Upto 6.5 metres	150 sq. mt. to 300 sq. mt.	Panchayat Samiti
Above 6.5 metres	Above 300 sq. mt.	Zilla Parishad

The abovementioned table finds support from Section 23(1) of the West Bengal Panchayat Act, 1973 and Rule 27 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004.

As the contention of Mr. Samanta is not accepted. This Court directs the Sub-Divisional Officer, Contai to act and proceed in terms of Section 23(5) of the said Act and decide the issue of unauthorized construction and/or construction beyond sanction. The question of right, title and interest vis-à-vis the land, shall not be gone into. The petitioner as also the respondent nos.12 to 14 shall be heard. As the hearing has already been fixed, this Court directs that the entire issue shall be disposed of and steps shall be taken in accordance with law within six weeks from the next date fixed. A reasoned order shall be passed and communicated to all.

It is made clear that this Court has not gone into the merits of the allegations made by the petitioner with regard to the unauthorized construction, but has only decided the point of law raised by Mr. Samanta.

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.)