

Court No. 19

WPA 8326 of 2023

08.05.2023

(AD 4)

(S. Banerjee)

Pranab Kumar Dey

Vs.

The State of West Bengal & Ors.

Mr. Soumen Kumar Dutta

Mr. Sabyasachi Bhattacharjee

... for the petitioner

Mr. Himadri Sikhar Chakraborty

Ms. Susnita Saha

... for the State

Mr. Supratim Dhar

Mr. Santimay Bhattacharya

Mr. Ziaul Haque

... for the respondent nos. 7 and 8

Mr. Kamalesh Bhattacharya

Mr. Indranath Mukhopadhyay

Mr. Pradip Kumar Neogi

Mr. Anirban Saha

Mr. Arnab Kumar Neogi

... for the respondent nos. 13, 14 and 15

The Zilla Parishad has produced documents to show that the construction which was permitted by the Zilla Parishad, was in accordance with law and in accordance with the application and the plan which was submitted by the respondent nos. 13 to 15 for construction on plot nos. 2012 and 2013/2055 of Mouza Deuli.

It appears that the respondent nos. 11 to 13 had initially applied for construction on the said plots before the Belda II Gram Panchayat.

The Gram Panchayat sanctioned construction of a covered area of 1561 square feet. Subsequently inspection by the Panchayat authorities revealed that the construction was around 2476.52 square feet, i.e., in excess of the area sanctioned by the Panchayat authorities. The construction was upto plinth level. Thereafter, no further construction had been raised.

In the meantime, the respondent nos. 13 to 15 approached the Zilla Parishad for necessary sanction upon realizing that the construction would exceed beyond the sanction granted by the Panchayat authorities. The Zilla Parishad granted a sanction in accordance with the rules and upon obtaining a no-objection from the Panchayat authorities.

Mr. Dutta, learned advocate for the petitioner, contends that when there was an existing finding of the Panchayat authorities that the respondent nos. 13 to 15 had constructed beyond the area permitted by the Panchayat authorities, the Paschim Medinipore Zilla Parishad could not have granted the sanction which would amount to regularizing an otherwise illegal construction.

Mr. Bhattacharya, learned advocate for the respondent nos. 13 to 15, submits that the construction went up to the plinth level only and upon realizing that the construction would go beyond the permissible area granted by the Panchayat authorities, the respondents

approached the Zilla Parishad for necessary sanction and no further construction had been raised in the meantime.

The Zilla Parishad, upon considering the application filed by the respondent nos. 13 to 15, granted sanction on December, 22, 2022.

Mr. Dhar, learned advocate for the respondent Zilla Parishad, has filed some notices which indicate that the Gram Panchayat and also the respondent nos. 13 to 15 have been called for a hearing and asked to produce documents in order to establish the legality of the proposed construction and the bona fide in approaching the Zilla Parishad. He further submits that the fact that there was an existing permission for construction over an area less than the one that had been constructed by the respondent nos. 13 to 15, was not known to the Zilla Parishad. The Zilla Parishad was not aware that proceedings had been initiated before this court, including a contempt proceeding, which actually led the Panchayat authorities to hold the inspection and make the observations in the report.

The contention of Mr. Dutta that the construction was in excess of the area permitted by the Panchayat authorities, is not disputed. There has been deviation from the plan sanctioned by the Gram Panchayat. Over and above the said construction, the Zilla Parishad granted a sanction. The rules provide that any

construction beyond 6.5 meters in height and having a plinth area of more than 300 square meters, should be sanctioned by the Zilla Parishad. Thus, this court does not find that the Zilla Parishad has granted sanction beyond the provisions of law. It is a different matter that the Zilla Parishad was not informed either by the Panchayat authorities or by the respondent nos. 13 to 15 that a proceeding had already been initiated by the Panchayat authorities as per the direction of the court.

The photographs which have been produced before this court indicate that hardly any construction has been made. Just the foundation has been construction.

Although, the respondent nos. 13 to 15 did not have any right to construct beyond the area sanctioned by the Gram Panchayat, the law provides them a right to apply before the appropriate permission-granting authority for construction over a larger area than what was sanctioned by the Gram Panchayat. However, such construction ought to have been made only after the appropriate permission-granting authority allowed the excess construction and not before that and they should have waited for the sanction from the Zilla Parishad.

Once, the Panchayat authorities detected a construction in excess of the area sanctioned by the Panchayat authorities, the sanction of the Zilla Parishad would amount to an indirect method of regularization of

an otherwise unauthorized construction, even if, such construction was at its initial stages.

Thus, the court directs the respondent nos. 13 to 15 to remove/demolish the construction made in deviation of the original sanction granted by the gram panchayat. Thereafter, the respondent nos. 13 to 15 can proceed on the basis of the sanction granted by the Zilla Parishad only after the proceedings which have been now initiated by the Zilla Parishad with regard to the suppression of facts by the Panchayat authorities as also by the respondent nos. 13 to 15 is disposed of in accordance with law and if the Zilla Parishad allows the construction on the basis of the sanction already granted. Respondent nos. 13 to 15 will intimate the Zilla Parishad about the removal and demolition of the excess portion and restoration of the construction to the area sanctioned by the Panchayat authorities. Thereafter, the Zilla Parishad shall issue further directions in accordance with law.

At the hearing called for by the Zilla Parishad, the petitioner shall also be allowed to participate and a reasoned order shall be passed by the Zilla Parishad, which shall be communicated to the parties. The entire exercise shall be completed within a month 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.)