

24.04.2023
Court No. 19
Item no.20
CP/SB

W.P.A. No. 8533 of 2023

Sk. Nanna Mohammad & anr.

Vs.

The State of West Bengal & Ors.

Mr. Uttam Kumar Bhattacharya

Mr. Kaustuv Mishra

Mr. A. Nag

Mr. Subhas Ch. Dutta

....for the petitioner.

Mr. Tapas Adhikari

Mr. Benazir Ahmed

....for the State.

Mr. Gurudas Mitra

Ms. Jonaki Saha

.....for the respondent nos. 16 and 17.

The petitioners allege that the panchayat authorities failed to take steps for demolition of the construction raised by the respondent nos. 16 and 17 on Plot No. 178 of Mouza – Paikan Dakshin Barh, by referring the same to the concerned panchayat samiti in view of the fact that the measurement of the basement and the ground floor indicated that the plinth area of the construction was beyond 150 sq. metres. Reference is made to the report of the Nirman Sahayak.

According to the learned advocate for the petitioners, such construction could not have been

permitted by the gram panchayat. The panchayat samiti would be the appropriate authority to grant such permission.

Learned advocate for the respondent nos. 16 and 17 have produced the sanction plan which indicates that the permission had been granted by the concerned gram panchayat before the amendment of Section 23(1) of the West Bengal Panchayat Act, 1973 limiting such permission to buildings upto 6.5 metres in height and plinth area of 150 sq. metres, had been incorporated. The amendment came into effect from November 9, 2017.

It appears that the sanction had been granted on November 7, 2017 by the gram panchayat, and at the relevant time there was no distinction amongst the permission granting authorities, on the basis of the height and plinth area of the proposed structures.

Moreover, pursuant to a direction of this court, the panchayat authorities held an inspection and found that the construction was strictly in accordance with the plan. Initially, the petitioners' allegation was construction without leaving mandatory side space. The panchayat authorities passed an order specifically stating that the construction was within the sanctioned area and not beyond the covered area sanctioned by the authority.

Hence, the Writ Court cannot go into a roving enquiry by directing the authorities to proceed any further.

If the petitioner still alleges that there is encroachment on the land belonging to the petitioners at the instance of the respondent nos. 16 and 17, such issue can only be decided in the civil suit, which is pending. The decision of the civil court will be binding on the alleged construction, if the allegation of encroachment is proved.

It appears that local investigation has been prayed for in the suit and the respondent no. 5 is contesting the suit. The suit will proceed in accordance with law and this order will not influence the suit court.

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.)