

01.02.2023
Sl. No.561(ML)
srm

W.P.A. No. 9873 of 2022

Chhamad Mondal & Ors.

Versus

The State of West Bengal & Ors.

Mr. Mohinoor Rahaman,
Ms. Maria Rahaman,
Ms. Iqra Rahaman

....for the Petitioners.

Ms. Piyali Sengupta,
Ms. Rupsha Chakraborty

...for the State-respondents.

Mr. Avishek Guha,
Ms. Akansha Chopra

...for the Respondent No.7.

Mr. Amit Kumar Nag,
Ms. Ranjabati Roy,
Mr. M. Roy

...for the Respondent No.8.

The writ proceeding cannot be transformed into a trial on evidence. Alleging dereliction of duty by the panchayat authorities and non-compliance of the statutory mandate under Rule 31 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004, an earlier writ petition was filed. The same was registered as WPA 12542 of 2021. The same was disposed of by this Court by the following order:-

“The documents which have been submitted before this Court indicate that all necessary permissions had been obtained by the respondent no.7. The Fire Department has also approved the project.

Mr. Nag, learned advocate for the Indian Oil Corporation also submits that upon verification of the documents such distributorship/licence has been given to the respondent no.7. Mr. Nag submits that as some of the villagers have filed the writ petition, the same is in the nature of a public interest litigation.

The documents, as produced by the respondent no.7, and the Indian Oil Corporation show that the go-down appears to have fulfilled all necessary legal compliances.

Mr. Nayak, learned advocate for the State respondents submits, on instructions from the Block Development Officer of the concerned Block, that the area is not densely populated and the go-down is situated in such a place that fire hazards are unlikely.

The petitioners have alleged that the panchayat authorities ought to have ascertained about the density of population in the area, before granting their No Objection.

Without going in to the merits of the claims and counterclaims of the parties, this writ petition is disposed of with a direction upon the Pradhan of Rajendrapur Gram Panchayat to consider and dispose of the representation of the petitioners in accordance with law upon hearing the representative of the petitioners and all other interested parties. A reasoned order shall be passed and communicated to all concerned. The Pradhan will proceed independently, in a free and fair manner.

The entire exercise shall be completed within a period of six weeks from the date of communication of this order.”

What the petitioners, in effect, now invite the Court to adjudicate is whether the Indian Oil Corporation Ltd. and other authorities including the Pradhan were justified in issuing the respective permissions and “no objections”. For such decision, the petitioners are inviting the Court to

enter into a deeper probe and a local investigation with regard to the distance of the houses of the villagers from the godown, the density of population, chances of hazards etc.

In the first round of litigation, the Court thought it fit to ask the panchayat authorities to consider the grievance of the petitioners. The Court had recorded specifically that all necessary statutory compliances had been obtained by the respondent No.7 including the permission from the panchayat authorities for construction of the godown. The Court had also recorded the submission of the learned Advocate for the Indian Oil Corporation Limited, who had categorically stated that upon an inspection held by the Corporation and upon being satisfied that the respondent No.7 had fulfilled all statutory requirements, the dealership was given to him to operate from the godown. The State-respondents also support such construction. The fire department, explosives department, District Magistrate and police authorities had granted "no objections". Thereafter, the panchayat authorities permitted the construction of the godown.

As the Court had directed the panchayat authorities to consider the grievances of the petitioners, the parties were called for a hearing and the panchayat authorities

were of the opinion that the permission had been granted in favour of the godown only because the fire licence, explosives licence, conversion certificate, 'no objections' from all the authorities including the police authorities and other administrative heads, had been obtained by the respondent No.7.

This writ petition came up before a learned co-ordinate Bench. The learned co-ordinate Bench directed the Block Development Officer, Basirhat-II @ Kholapota Development Block, to cause an inspection and file a report indicating whether the area was thickly populated or not.

The enquiry report has been submitted before the Court today. It appears that the entire demarcated area under the said gram panchayat was surveyed from house to house in order to count the number of houses existing and the persons residing. It was found that there are approximately 51 households and 286 persons living in the area. A sketch map has also been presented before the Court which indicates that behind all these plots there are only water bodies. The godown has been constructed in front of a water body and by the side of the PWD road. The authorities did not find the area to be thickly populated. The Indian Oil Corporation Limited also did not consider the godown suitable for storage of gas cylinders.

As per the sketch map and the index, the houses of the petitioner Nos.1 and 2 and the godown are on opposite sides and separated by a wide PWD road. It has been specifically stated that the area is not thickly populated and is a population free zone. The house of the petitioner No.3 does not appear in the sketch map.

In the earlier order passed by the Court, the fact that all compliances have been met by the respondent Nos.6 and 7 was already recorded. The petitioners did not object to the same. The order impugned, which has been passed by the panchayat authorities is a justification as to why the panchayat authorities had given their 'no objection' for such construction. The panchayat authorities found that when all the compliances were in place, the godown could be constructed.

With regard to the density of population, the Block Development Officer has filed a detailed report. The writ court cannot hold a trial on the findings of the authorities and after the specific assertion by each and every authority including the Indian Oil Corporation Limited that the godown had started operating, upon compliance of all necessary formalities and upon obtaining permission from each and every authority under the law.

This Court can only restrict its adjudication to the question as to whether the panchayat authorities had failed to exercise their statutory duty.

Under such circumstances, the writ petition is disposed of without any orders.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)