

09. 04.08.2023
Court No.6
Tanmoy Ghosh

FMA 963 of 2022

Sudhangsu Ghosh
-Versus-
The State of West Bengal & Ors.
With
IA No: CAN/1/2022

Mr. Bhaskar Chandra Manna, Adv.

...for the appellant/
writ petitioner.

Mr. Debasish Das, Adv.

...for the respondent nos. 9-14.

By consent of the appearing parties, the appeal and the connected application are taken up together for hearing.

A judgment and order dated March 30, 2022, whereby the appellant's writ petition being WPA 15452 of 2021, was disposed of by a learned Single Judge of this Court, is under challenge in this appeal.

The appellant approached the learned Single Judge with a grievance that his application for sanction of a Building Plan has been rejected by the concerned *Gram Panchayat*. The *Pradhan* of the concerned *Gram Panchayat*, by an order dated April 13, 2019, held that sanction of the Building Plan on *Dag* No. 1131, could not be granted by the *Panchayat* Authorities as the sanctioning Authority was the *Panchayat Samiti*.

The learned Judge also referred to the West Bengal *Panchayat (Panchayat Samiti Administration) Rules*, 2008. The *Panchayat* Authorities contended that the area in question was a notified area under the concerned

Development Authority in terms of the provisions of the West Bengal Town and Country (Planning and Development) Act, 1979.

The learned Judge observed that according to the development plan published, the area, in which the writ petitioner proposes to construct a building, falls within the jurisdiction of the Haldia Development Authority. The learned Judge disposed of the writ petition by observing as follows:-

“The petitioner has the option to approach the concerned Panchayat Samiti in accordance with law. If the petitioner is aggrieved by the merits of the decisions of the Panchayat authorities, the order being appealable under Section 23(4) of the West Bengal Panchayat Act, 1973, the petitioner may prefer an appeal, before the appellate authority.

This Court has not gone into the claims and counter-claims of the parties.”

Being aggrieved, the writ petitioner is before us by way of the present appeal.

Mr. Manna, learned Advocate appearing for the appellant/writ petitioner, vociferously argued that the *Pradhan* of the concerned *Gram Panchayat* has passed a patently erroneous order. He has drawn our attention to the order at page 48 of the application filed in connection with the appeal.

We have not called upon the respondents to make argument.

The crux of the matter is that the concerned *Gram Panchayat* has passed an order in exercise of power under Section 23(3) of the West Bengal Panchayat Act,

1973 (hereinafter referred to as the '1973 Act'), which reads as follows:-

“ 23. Control of building operations. –

... (3) On receipt of such application the Gram Panchayat, after making such enquiry and examination of the building plan as it considers necessary and in accordance with such rules as may be made by the State Government in this behalf, shall, be order in writing, either grant the permission or refuse it, recording in the case of refusal the reasons therefor.”

Section 23(4) of the 1973 Act provides for a statutory appeal by the aggrieved party against an order passed by the *Gram Panchayat* under Sub-Section (3) refusing permission to build. Sub-Section (4) of the 1973 Act reads as follows:

“ 23. Control of building operations. –

... (4) Any person aggrieved by an order of the Gram Panchayat under sub-section (3) refusing permission or non-receipt of any intimation in this regard within the stipulated time as may be prescribed, may prefer an appeal to such appellate authority as may be prescribed :

Provided that any person aggrieved by an order of the authority may prefer an appeal before the reviewing authority as may be prescribed :

Provided further that no appeal shall lie against the order of the reviewing authority.”

In view of availability of such statutory alternative remedy, we are of the opinion that the appellant/writ petitioner ought not to have approached the writ Court. He should have taken recourse to Section 23(4) of the 1973 Act. In our opinion, the statutory appeal is a much more efficacious remedy since factual disputes may be involved, which it may not be convenient for the writ Court to adjudicate.

For the reasons afore-stated, without entering into the merits of the appellant's case, we dispose of the appeal with the following liberty to the appellant:-

The appellant will be at liberty to approach the Appellate Authority prescribed by Section 23(4) of the 1973 Act. If the appellant approaches the Appellate Authority within four weeks from date, that Authority shall decide the appeal on merits, in accordance with law, without going into the question of time-bar or limitation. Needless to say, the Appellate Authority, if approached by the present appellant, shall decide the appellant's case by passing a reasoned order, in accordance with law, after granting opportunity of hearing to all concerned parties, within a period of eight weeks from the date of filing of the appeal.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being FMA 963 of 2022 and the connected application being IA No: CAN/1/2022 are accordingly disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)