

07.02.2023
Sl. No.8(DL)
srm

W.P.A. No. 10516 of 2022

Tousif Mondal

Vs.

The State of West Bengal & Ors.

Mr. Sandip Das

....for the Petitioner.

Mr. Naba Kumar Das,
Mr. Subhabrata Das

...for the State-respondents.

Mr. Tapash Kumar Mondal

...for the South 24-Parganas
Zilla Parishad.

Mr. Sandip Mandal

...for the Respondent No.10.

The petitioner alleges that the respondent No.10 had constructed a G+2 storeyed commercial building on Dag No.4905 of mouza Kamarpole.

The learned Advocate for the respondent No.10 has handed over the permission from the Pradhan granted on October 13, 2020 permitting construction on the said plot, as per the sanctioned plan. The sanction plan dated October 12, 2020 is before the Court. It appears that a ground floor having an area of 126.88 sq. mtr. and the first floor having an area of 130.84 sq. mtr. had been sanctioned by the panchayat authorities.

The petitioner contends that the construction had been made exclusively in terms of the permission granted.

The respondent No.10 relies on the occupancy certificate granted by the Pradhan, Kamarpole Gram Panchayat, South 24-Parganas dated June 18, 2022 certifying that the building was inspected and found to be fit for occupation.

Mr. Mondal, learned Advocate for the South 24-Parganaas Zilla Parishad submits that after the complaint was received from the petitioner an inspection was held in presence of the parties and a G+2 storeyed building was found to be existing in the said plot, although permission to construct a G+1 storeyed building had been given by the gram panchayat.

The police report indicates that a G+2 storeyed building had been constructed and on the request of the District Engineer, South 24-Parganas Zilla Parishad, steps had been taken to stop such construction.

The writ petition is disposed of with a direction upon the competent authority of the South 24-Parganas Zilla Parishad to make a further inspection in the presence of the parties and the Pradhan of Kamarpole Gram Panchayat. A report of such inspection specifically indicating the extent and the nature of unauthorised

construction, if detected, shall be prepared. The petitioner has a sanctioned plan for a G+1 storeyed building. Whether any construction had been made beyond the said permission shall be detected. The height of the entire building after construction of the alleged additional floor shall be measured. If it is found that the height is beyond 6.5 mtr., only then the Zilla Parishad shall retain the competence to decide the issue of unauthorised construction of the additional floor. In case it is found that the height is below 6.5 mtr., then the matter shall be referred to Kamarpole Gram Panchayat.

Panchayat authorities do not have any authority to grant permission or sanction for construction beyond 150 sq. mtr. plinth area and above 6.5 mtr. height. In either case, irrespective of who would be the permission granting authority i.e., the South 24-Parganas Zilla Parishad or the Kamarpole Gram Panchayat, the allegation of unauthorised construction shall be disposed of by adhering to the following procedure:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent No.10, with 48 hours advance notice to the petitioner and the respondent

No.10. Whether such inspection is conducted by the zilla parishad, the Pradhan of the concerned gram panchayat shall be present at the time of inspection.

- b) A report of the inspection shall be prepared along with a sketch map indicating whether any construction or addition or alteration had been made devoid of any sanction or in deviation of the sanction, if any.
- c) Such report shall be handed over to the petitioner as also the respondent No.10.
- d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and had been continuing, the authorities may take interim measures by stopping such construction.
- e) A hearing shall be given to all the parties. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions, before the competent authority.
- f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the

proceedings shall be reached to its logical conclusion in accordance with law.

- g) If the proceedings are conducted by the Zilla Parishad, in this case as per the height, Section 160A(6) of the West Bengal Panchayat Act, 1973 shall be followed. If the gram panchayat decides the matter, in that event Section 23(5) of the West Bengal Panchayat Act, 1973 will be followed.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

The Court has not gone into the merits of the claims of the parties and the issues raised, shall be decided by the competent permission granting authority.

The question of title, possession, encroachment, etc. shall not be gone into.

A copy of the writ petition along with a server copy of this order be served upon the Sabhadhipati, South 24-Parganas Zilla Parishad.

The writ petition is, thus, disposed of.

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.)