

16.05.2023
Sl. No.16(DL)
srm

W.P.A. No. 11483 of 2023
Syed Bakibillah
Versus
State of West Bengal & Ors.

Mr. Souojanya Bandyopadhyay,
Ms. Sweta Mukherjee
....for the Petitioner.

Mr. Jahar Lal De,
Mr. Rudranil De
...for the State-respondents.

Md. Hadiur Rahaman,
Mr. Krishnendu Bera,
Ms. Shravani Paul,
Ms. Debolina Chakraborty
...for the Respondent Nos.8 & 9.

Despite service, none appears on behalf of the panchayat authorities. Affidavit-of-service is taken on record.

The petitioner has challenged the final report prepared by the Pradhan of Khorda Gram Panchayat, South 24-Parganas, which is annexure P-13 at page 61 to 62 of the writ petition. Such report was prepared on April 28, 2023.

The report is the culmination of an order passed by this Court dated January 4, 2023, in WPA No.28667 of 2022.

The petitioner had filed the said writ petition alleging that

a two-storeyed building was being constructed unauthorisedly on LR Dag No.545 pertaining to Khatian No.891 within mouza Dakshin Simla. The other allegation was with regard to the encroachment of the land of the petitioner. The writ petition was disposed of with a direction upon the Khorda Gram Panchayat to dispose of the representation of the petitioner by considering the allegation of unauthorised construction. A procedure had been laid down by the Court, which was to be followed during such decision. Upon completing the entire process, the gram panchayat was directed to act and proceed in accordance with the provisions of Section 23(5) of the West Bengal Panchayat, 1973.

It appears that pursuant to the direction of this Court an inspection was held on March 11, 2023 at 11.30 a.m. The respondent Nos.8 and 9 submitted documents including a plan of a two-storeyed residential building. The said plan had been prepared by an engineer, but had not been sanctioned by the Pradhan. The petitioner produced the answer given by the gram panchayat under the Right to Information Act dated January 16, 2023. The fact that the Khorda Gram Panchayat did not have any record in its office with regard to the grant of sanction in favour of Syeda Shyama Bibi, the respondent No.8 herein,

had been recorded in the inspection report. It was also recorded that no application for sanction had been filed in the office.

Subsequently, the final report which is under challenge, was prepared upon hearing the parties. It appears from the report that at the time of physical verification the building plan had not been sanctioned. For the first time at the hearing the respondent No.8 claimed that the sanction for the building on LR Dag No.545 pertaining to Khatian No.891 within mouza Dakshin Simla under the Khorda Gram Panchayat had been granted on March 27, 2023. A copy of the same was produced at the time of hearing. Fees of Rs.3,100/- for approval of the plan had been accepted by the gram panchayat. Therefore, it appears that the building plan in respect of the construction on LR Dag No.545, was sanctioned after the inspection, but just before scheduled date of hearing. The Pradhan observed that the said building should neither be demolished nor destroyed as the plan had been subsequently sanctioned.

The petitioner submits that *post facto* sanction could not be given, especially when the High Court had directed the authorities to decide the issue of unauthorised

construction. It is further submitted that conversion of the land had not been obtained prior to such construction.

The learned Advocate for the respondent Nos.8 and 9 submits that the plan had been deposited in the office of the gram panchayat and conversion has been applied for on March 21, 2023 for conversion from 'sali' to 'bastu'. Further contention is that the issue of illegal conversion of the land should be decided by the learned Tribunal and this Court would not have jurisdiction to consider such aspect.

Admittedly, when the order was passed on January 4, 2023, directing the panchayat authorities to look into the representation of the petitioner with regard to the allegation of unauthorised construction of the respondent Nos.8 and 9, the plan had not been sanctioned. Even at the time of inspection, the gram panchayat found that a plan had been prepared, but not sanctioned.

Next, the question of *post facto* sanction does not arise as the law does not provide for either regularization of an unauthorised construction or grant of sanction after the building has been completed. Even at the inspection, the authority found that there were documents showing that the plan had been prepared. The space where the seal and signature of the Pradhan was to be affixed was blank.

The answer of the authority under the Right to Information Act clarifies that no plan had been filed in the gram panchayat office for sanction and the office records did not indicate that such sanction had ever been granted. The inspection was held on March 11, 2023 and the hearing was given on April 28, 2023. Between this intervening period, a *post facto* sanction was given by the gram panchayat and the Pradhan arrived at the conclusion that the building was not unauthorised.

In the matter of ***Dipak Kumar Mukherjee v. Kolkata Municipal Corpn.*** reported ***in (2013) 5 SCC 336***, the Hon'ble Apex Court held as follows:-

“24. In view of the pleadings filed before the High Court and the affidavits filed before this Court, there is no escape from the conclusion that Respondent 7 had raised construction in violation of the plan sanctioned under Section 396 of the 1980 Act and continued with that activity despite the order of the Mayor-in-Council. In the prevailing scenario, the representative of Respondent 7 might have thought that he will be able to pull strings in the power corridors and get an order for regularisation of the illegal construction but he did not know that there are many mortals in the system who are prepared to take the bull by horn and crush it with iron hand.

29. It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines,

drainage, sewerage, etc. Unauthorised construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the public authorities concerned not only to demolish such construction but also impose adequate penalty on the wrongdoer.

In the matter of **Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn.**, reported in **(2021) 10 SCC 1**, the Hon'ble Apex Court discussed the duties of the civic bodies and lamented the sorry state of affairs as under:-

“167. The Court further observed that an unauthorised construction destroys the concept of planned development, and places an unbearable burden on basic amenities provided by public authorities. The Court held that it was imperative for the public authority to not only demolish such constructions but also to impose a penalty on the wrongdoers involved. This lament of this Court, over the brazen violation of building regulations by developers acting in collusion with planning bodies, was brought to the forefront when the Court prefaced its judgment with the following observations : (Esha Ekta Apartments case [Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai, (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89] , SCC p. 363, para 1)

In ***Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai*** reported in **(2013) 5 SCC 357**, the Hon'ble Apex Court observed as follows:-

“8. At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their hands and get away with it.”

According to this Court, the observation of the Pradhan and the final report are completely *de hors* the law. A sanction has been granted for a two storeyed building after orders were passed by this court for determination of the issue and for appropriate legal steps in terms of the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973. The gram panchayat did not have any authority under the law to sanction a building which was found to be unauthorised. Just a day before the date of hearing, that is, on March 27, 2023 the sanction had been granted by disobeying the order of this Court dated January 4, 2023. The sanction given to the respondent Nos.8 and 9 were completely illegal, unauthorised and arbitrary and in

violation of the order of this court. Unlike some municipal laws which allow regularization of minor deviations, the Panchayat Act does not empower the authority to even regularize minor deviation and definitely a two storeyed building could not have been sanctioned when demolition proceedings were going on.

Reliance is placed on a decision of the Hon'ble Division Bench in the matter of *Falguni Mukherjee vs The State of West Bengal & Ors*, decided in *MAT 1025 of 2022*, the relevant portions of the decisions rendered by Arijit Banerjee J, are quoted below:-

“ 6. Section 23 is a regulatory provision. It makes it mandatory for a person to obtain prior permission from the concerned Panchayat before he can construct a building beyond a certain dimension. Two of the important objects of a statutory provision regulating construction of buildings or addition/alteration to buildings are to ensure optimal utilisation of land which is a scarce commodity and also planned development of a particular locality. In my understanding, keeping those objects in mind, the State Legislature has included Section 23 in the 1973 statute, making it obligatory for a person to obtain previous permission of the concerned Panchayat before putting up a building beyond the dimension mentioned in the said Section. The entire object and rationale behind Section 23 would be defeated if a person is permitted to construct a building without having a building plan sanctioned by the Panchayat, as per his own whims, and then apply for post-facto permission for regularising the unauthorised construction.

7. In my considered opinion, section 23 of the 1973 Act does not envisage grant of post facto sanction of a building plan after construction of the building is

completed. The language of Section 23(1) is plain and clear. There is no ambiguity, no scope for confusion. The language is not capable of more than one interpretation. No canons of construction of a statute are required to be pressed into service for ascertaining the true scope, effect and meaning of Section 23(1) of the 1973 Act.

8. An interpretation has to be given to a provision of law like Section 23(1) of the 1973 Act, which will discourage people from taking law into their own hands and dissuade them from putting up constructions without obtaining prior permission of the concerned authority. A building constructed in violation of the provisions of Section 23(1) of the 1973 Act must be held to be illegal and unauthorised and incapable of being regularised. If Section 23(1) is construed as permitting the Panchayat to accord post facto sanction, the same is also likely to lead to show of money power and corruption. On this aspect, the learned Single Judge has observed, and in my opinion very aptly, as follows:-

"In the present day there is a growing tendency to flout the law. Mindset of the public is developing that anything and everything is possible by spending money and by greasing the palms of the persons who are in power. The petitioner mustered the guts to make construction of two storied pucca construction, photograph of which has been produced in Court, without the minimum permission from the competent authority. In fact, permission to make construction was never sought for. The petitioner was absolutely confident that somehow or the other the construction raised will be regularized in a circuitous manner by paying money on the garb of fine.

If the prayer of the petitioner for post facto sanction is allowed, nobody will care for the law and apply for obtaining sanction prior to making construction. The said idea is to be nipped in the bud otherwise the rule of law cannot be applied. There ought not to be different set of rules/law for different people. When a law is there in place the same is bound to be followed.

...

Any interference with the order of demolition will lower the morale of the officers who resisted the temptation to regularize the illegal and unauthorized construction by accepting money from the petitioner. The authority ought to be encouraged for sticking to the law and it is expected that they should continue to keep strict vigil so that the violators of law are suitably dealt with."

9. Learned Advocate for the appellant submitted that sub-section 6 of Section 23 contemplates that the concerned authority may order demolition of a building which has been constructed in contravention of the provisions of sub-section 1. He contended that an element of discretion remains with the authority and it is not mandatory for the authority to order demolition. This necessarily implies that the authority has power to grant post facto approval to a building plan if an application for sanction is made even after completion of construction.

I am unable to agree with the above submission of learned Counsel. A degree of discretion may be there with the authority to be exercised in cases where there may be minor deviation from the sanctioned plan or where the builder is able to persuade the authority that there are other good reasons for not directing demolition. In such cases, the authority may refrain from order in demolition upon such terms as the law may envisage. However, I am unable to interpret sub-section 6 of Section 23 in a manner so as to infer that the authority has power to grant post facto sanction to a building plan where a building is constructed without obtaining any sanction at all from the concerned authority.

10. Persons who think they can flout the law with impunity, deserve no sympathy. Unauthorised construction has become a major problem in our society which has to be tackled with iron hands. No leniency ought to be shown to persons who have scant regard for law. If such persons are treated with misplaced sympathy, Rule of Law will be the casualty, which cannot be countenanced."

Secondly, Rule 26 of the West Bengal Panchayat (Gram Panchayat Administrative) Rules, 2004 clarifies that the panchayat authorities cannot grant sanction for construction on any land apart from a homestead land. Homestead land means '*bastu*' land. Admittedly, even on March 27, 2023, conversion had not been allowed. The respondent Nos.8 and 9 applied in Form 1C for regularization of the change of character of the land and/or conversion, only on March 21, 2023.

Thus, even though the issue of conversion is covered under a specified act, that is, the West Bengal Land Reforms Act, 1955, this Court can take cognizance of the fact of non-conversion and hold that the panchayat authorities had acted contrary to the rules by granting *post facto* sanction in respect of a construction which was completed sometime in 2022 on a land which was recorded as '*sali*' and no conversion to '*bastu*' had been permitted.

The order impugned dated April 28, 2023 is set aside to the extent of the observation that the construction being sanctioned on March 27, 2023 did not make the building unauthorized and the building should not be either demolished or destroyed.

The report along with the report of physical inspection shall be forwarded to the Sub-Divisional

Officer, Diamond Harbour, for necessary action in terms of Section 23(5) of the West Bengal Panchayat Act, 1973, within a week from the date of communication of this order. Steps for demolition shall be taken upon affording one last opportunity of hearing to the respondent Nos 8 and 9 as also the petitioner. The entire exercise shall be completed within a period of one month from the date of receipt of the report from the gram panchayat.

A copy of the writ petition along with a server copy of this order be served upon the Pradhan, Khorda Gram Panchayat and the Sub-Divisional Officer, Diamond Harbour, South 24-Parganas.

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.)