

April 13, 2023
Sl. No.A 66
Court No.19
s.biswas

WPA 12002 of 2022

Sitanath Guin
vs.
The State of West Bengal and others

Mr. Arkadipta Sengupta, Advocate
... for the petitioner
Mr. Jahar Lal De,
Mr. Shamim Ul Bari, Advocates
... for the State
Mr. Suman Basu, Advocate
... for the Hooghly Zilla Parishad
Mr. Sukanta Chakraborty,
Mr. Anindya Halder, Advocates
... for the private respondents

Affidavit of service filed by the petitioner is
taken on record.

The petitioner has challenged the order passed
by the Block Development Officer, Chanditala-II
Development Block dated June 7, 2022. The Block
Development Officer was of the opinion that the
construction of the respondent nos.7 to 11 could not
be held to be illegal. Such order was passed as the
Upa-Pradhan of Begumpur Gram Panchayat could
not produce documents in respect of such
construction. The alleged construction is a three
storeyed building at Dag No.3293 corresponding to
Khatian Nos.2757/1 and 1453/1, Mouza-Begumpur,
Dist.-Hooghly.

In the opinion of the Court, the finding of the
Block Development Officer is at best a factual finding
arrived at, upon being directed by the Court to
decide the issue as to whether at any material point

of time a building plan had been submitted by the predecessor in interest of the respondent nos.7 to 11.

Although the Block Development Officer is not an appellate authority to decide the issue of unauthorized construction, the order of the Block Development Officer is as a consequence of a direction of this Court. The findings of the Block Development Officer is at best a finding of fact in favour of the respondent nos.7 and 11. It also appears that the Block Development Officer had not decided the issue as to whether any plan had either been submitted or sanctioned by the appropriate permission granting authority in terms of the provision of West Bengal Panchayat Act, 1973.

The petitioner had alleged unauthorized construction by the respondent nos.7 to 11. The petitioner had approached the wrong authority for adjudication of the issue.

However, the actual determination of the issue of unauthorized construction in this case has to be done by the authority empowered by the provisions of law i.e. the Hooghly Zilla Parishad.

As the height of the building is more than 6.5 metres as per the allegation made by the petitioner, neither the gram panchayat nor the panchayat samity would be the permission granting authority.

It is submitted by the private respondents that due permission had been taken for construction, which is denied by the petitioner and there is no reflection of the same in the findings of the Block Development Officer.

The Court deems it fit to direct the petitioner to approach the Zilla Parishad with a detailed representation with regard to the alleged illegalities in the construction of the respondent nos.7 to 11 and for necessary steps in terms of Section 160A and Sub-Section 6, thereof.

While doing so, the following procedure shall be adopted:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos.7 to 11. An advance notice of the inspection shall be served upon the petitioners and the respondent nos.7 to 11 and on all other interested parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.
- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without any sanction and was continuing, the authorities may take

such interim measures, by stopping such construction.

c) A report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.

d) Such report shall be handed over to the parties. The question of right, title, interest, possession and boundary dispute etc. shall not be decided by the panchayat authorities. The issues to be decided would be whether the construction is in accordance with a sanctioned plan or in absence thereof.

e) A hearing shall be given to the petitioner and the respondent nos.7 to 11. The parties must also be allowed to furnish their written objection/version to the report and adduce oral and documentary evidence in support of their contentions before the competent authority. All points raised by either party, will be decided.

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.

The court has not gone into the merits of the claims of the petitioner and the entire issue involved,

shall be decided by the permission granting authority in accordance with law and without being influenced by any of the orders passed so far.

The entire exercise shall be completed within a period of four months from the date of receipt of the petitioner's representation.

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 server copy of this order.

(Shampa Sarkar, J.)