

13 03.10.2023
rkd Ct.15

W.P.A. 10989 of 2016

Arati Ghosh

-vs-

The State of West Bengal & Ors.

Mr. Bhagbat Chaudhuri,
Mr. Mahbub Asfakul Zinna

....for the petitioner.

Ms. Mekhla Sinha ,
Ms. Malabika Roy Dey

....for the Howrah Zilla Parishad.

Mr. A. K. Chattopadhyay,
Ms. S. Saha

....for the respondent nos. 6 (a) & 6 (b).

Mr. Ananda Farmania
Ms. Indumouli Banerjee

....for the State.

The writ petition has been instituted, *inter alia*, challenging inaction on the part of the concerned Panchayat Authorities specially Howrah Zilla Parishad in not taking steps pursuant to the decision dated 15th June, 2015 passed by the District Engineer, Howrah Zilla Parishad and the subsequent report dated 4th March, 2016 of the Assistant Engineer, Howrah Zilla Parishad centering around legality and validity of the construction made by the predecessor-in-interest of substituted respondent nos. 6(a) & 6(b). The original respondent no.6, Santosh Ram has died during pendency of this writ petition who is alleged

to have made unauthorised construction.

During course of hearing Mr. Chaudhuri, learned advocate representing the petitioner has drawn attention of this Court to the order dated 15th June, 2015 and the subsequent report dated 4th March, 2016 issued by the Assistant Engineer, Howrah Zilla Parishad.

Reliance has also been placed on the order of the Hon'ble Division Bench dated 12th November, 2014 passed on an intra Court appeal being MAT 1576 of 2014 (Arati Ghosh -vs- State of West Bengal & Ors.) whereby the Hon'ble Division Bench made it clear that it was open to Howrah Zilla Parishad to decide the issue after granting opportunity of hearing to the appellant and private respondents.

It also appears from the order dated 12th November, 2014 that the remedy which was available before the civil court was also kept open. Placing reliance on the findings of the District Engineer as contained in the order dated 15th June, 2015 it has been submitted on behalf of the petitioner that 4 decimal land situates at Dag No.1462 under Uttar Jhapordah Gram Panchayat comes under the jurisdiction of Kolkata Metropolitan Development Authority (for short

“KMDA”). The Prodhan of Uttar Jhapordah Gram Panchayat does not have authority to accord sanctioned plan in favour of the private respondents based on application made by the predecessor-in-interest of the private respondents seeking sanctioned plan.

It is also contended on behalf of the petitioner relying upon pages 59 and 60 of the affidavit-in-opposition used on behalf of the private respondents that on 24th January, 2014 the predecessor-in-interest of the private respondents made an application to the Prodhan of the concerned Gram Panchayat and on the selfsame date i.e. 24th January, 2014 a sanctioned plan was accorded permitting the private respondents to erect two storied building.

Sum and substance of the submissions made on behalf of the petitioner is since it has already been observed by the District Engineer, Howrah Zilla Parishad that the aforementioned land in question comes under the jurisdiction of KMDA the Prodhan of the concerned Gram Panchayat is not authorised to issue sanctioned plan and by this time necessary steps should have been taken by the concerned authority of Howrah Zilla Parishad against the private respondents.

The learned advocate representing Howrah Zilla Parishad has made submission based on the affidavit affirmed on 11th September, 2023 and it has been submitted that the concerned authority of Howrah Zilla Parishad is not the appropriate authority to issue sanctioned plan in favour of the private respondent rather the Prodhan of the concerned Gram Panchayat is the appropriate authority in consideration of the notification dated 29th September, 2018.

Having seen the date of this notification and the date of permitting the private respondents to erect two storied building in terms of the sanctioned plan dated 24th January, 2014 this Court has posed a query to the learned advocate whether the notification dated 29th September, 2018 has retrospective effect in consideration of the fact that the sanctioned plan was accorded on 24th January, 2014. This Court does not get satisfactory reply.

However, the learned advocate representing the Howrah Zilla Parishad has relied upon another notification dated 29th November, 2013 which is annexed to the exception used by the private respondents and the same notification dated 29th November, 2013 has also been relied upon by

private respondents in order to demonstrate before this Court that in spite of the fact that the land in question comes under the jurisdiction of KMDA the Prodhan of concerned Gram Panchayat is the appropriate authority to accord sanctioned plan. Serial No.3 in the table as contained in the notification dated 29th November, 2013 has been relied upon.

In addition thereto first schedule to West Bengal Town and Country (Planning and Development) Act, 1979 has been relied upon by the learned advocate representing the private respondents in order to submit before this Court that the land in question does not come under the jurisdiction of KMDA. Therefore, according to the private respondents the Prodahn of the concerned Gram Panchayat did no wrong in issuing sanctioned plan on 24th January, 2014 and there is no discrepancy with regard to the construction made by the predecessor-in-interest of the private respondents.

Having considered the submissions made on behalf of the learned advocates representing the parties and on perusal of the relevant notifications as well as materials available on record, this Court finds that two aspects are required to be examined

which were indicated in the previous order passed by this Court dated 1st September, 2023 – i) whether pursuant to the order of the Assistant Engineer, Howrah Zilla Parishad dated 4th March, 2016 the sanctioned plan was submitted before the concerned authority of Howrah Zilla Parishad by the private respondents; ii) if the land in question comes under the jurisdiction of KMDA whether the Prodhan of Uttar Jhapordah Gram Panchayat is the appropriate authority to issue sanctioned plan in favour of the private respondents.

It has been submitted by the learned advocate representing the Private respondents that the sanctioned plan dated 24th January, 2014 has not been submitted before the concerned authority of the Howrah Zilla Parishad.

Therefore, this Court directs the respondent nos.6(a) & 6(b) to submit sanctioned plan dated 24th January, 2014 before the District Engineer, Howrah Zilla Parishad within seven days from date.

Though first schedule to West Bengal Town and Country (Planning and Development) Act, 1979 has been relied upon to show that the land in question does not come within the purview of KMDA but this Court finds it apt to direct the District, Engineer, Howrah Zilla Parishad to first

decide whether the land in question comes under the jurisdiction of KMDA or not. If it is found by the District, Engineer that the land in question comes under the jurisdiction of KMDA in that event the said District Engineer will be required to decide whether the Prodhan of Uttar Jhapordah Gram Panchayat was empowered to grant sanctioned plan in favour of the private respondents or not.

However, if it is decided by the District, Engineer that the land in question does not come under the jurisdiction of KMDA in that event the provisions which were in vogue in relation to grant of sanctioned plan in the panchayat areas shall apply in the present case.

On the contrary if it is found that the land in question comes under the jurisdiction of KMDA, the District Engineer shall pass a reasoned order whether the concerned Prodhan was authorised to issue sanctioned plan dated 24th January, 2014 or not and if it is further concluded by the District Engineer that the concerned Prodhan was not authorised to issue sanctioned plan in connection with the area falls under the jurisdiction of KMDA then appropriate order shall be passed by the District Engineer deciding the fate of the construction made by the predecessor-in-interest of

the private respondents based on the sanctioned plan dated 24th January, 2014.

While taking decision the District Engineer shall take note of the decision already taken by the District Engineer on 15th June, 2015.

The above exercise shall be performed by the District Engineer, Howrah Zilla Parishad within a period of twelve weeks from the date of receipt of sanctioned plan to be submitted by the private respondents in terms of directions given above.

Before taking such decision seven days' notice shall be issued to the petitioner and the private respondents for making deliberations.

The reasoned decision to be taken by the District Engineer, Howrah Zilla Parishad shall be communicated to the parties within seven days thereafter.

However, it is made clear in view of above discussion the notification dated 29th September, 2018 relied upon by the learned advocate representing the Howrah Zilla Parishad shall not be taken into consideration since the same does not have retroactive operation.

With the aforesaid direction, the writ petition stands disposed of.

However, there shall be no order as to

costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)