

18.01.2023
Sl. No.8&9(DL)
srm

W.P.A. No. 27925 of 2022
Gokul Bera
Vs.
The State of West Bengal & Ors.

With
W.P.A. No. 659 of 2023
Ganesh Bag & Anr.
Vs.
The State of West Bengal & Ors.

Mr. M.A. Samad,
Mr. Nayeb Mulla,
Mr. Srijit Chattopadhyay
....for the Petitioner in WPA 27925/2022 &
Respondent No.8 in WPA 658/2023.

Mr. Mainak Ganguly,
Mr. Anhishek Singh,
Mr. Swarup Saha
Mr. M.A. Samad,
Mr. Nayeb Mulla,
Mr. Srijit Chattopadhyay
....for the Petitioners in WPA 658/2023
& Respondent Nos.8&9 in WPA 27925/2022.

Mr. Debjit Mukherjee,
Mrs. Susmita Chatterjee
...for the State-respondents.

Mr. Anujit Mookherji
...for the Pradhan.

Affidavits of service in both the writ petitions are
taken on record. Despite service, none appears on behalf of
the Haldia Development Authority.

Noticing the common questions of fact and law involved in these two writ petitions, the writ petitions are taken up analogously.

WPA No.659 of 2023 has been filed by the persons allegedly responsible for an unauthorised construction over plot Nos.712 and 713 of mouza Krishnanagar pertaining to J.L. No.74, District-Purba Medinipur. The petitioners have challenged the reasoned order passed by the Pradhan of Guaberia Gram Panchayat, District-Purba Medinipur. Such order of the Pradhan was passed pursuant to a direction of this Court in WPA No.2635 of 2021. The Court had directed the Guaberia Gram Panchayat to dispose of the representation of the persons who had raised objection to the construction of the petitioners. The panchayat authorities were directed to reach the entire matter to a logical conclusion, in terms of the statute.

The panchayat authorities granted a hearing to the petitioners as also the persons who had complained against such construction. The panchayat authorities found that the construction on plot Nos.712 and 713 to be unauthorised. Plot No.713 was classified as a '*doba*' and plot No.712 had been classified as a '*pukur*'. It was further found that the area was under the Haldia Development

Authority, but no permission or sanction had been obtained from the competent permission granting authority.

Mr. Ganguly, learned Advocate appearing on behalf of the petitioners in WPA No.659 of 2023 submits that once the Haldia Development Authority had granted permission under Section 46 of the West Bengal Town and Country (Planning and Development) Act, 1979 (hereinafter referred to as the said Act of 1979) for development of plot No.712 as '*bastu*', no further permission or sanction was required to be taken under the provisions of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act of 1973).

Mr. Ganguly refers to Sections 2(7), 46 and 137 of the said Act of 1979. Mr. Ganguly emphasizes that the said Act of 1979 had an overriding effect over the said Act of 1973 and any other law which dealt with grant of approval and sanction for the construction of a building under the jurisdiction of a development authority.

According to Mr. Ganguly, permission for development includes the permission to build a house in terms of the definition of the word '*development*' in the said Act of 1979. Learned Advocate submits that the construction was made with permission from the Haldia

Development Authority and could not be declared as illegal in view of the protection granted under sub-section (2) of Section 137 of the said Act of 1979.

Next, Mr. Ganguly contends that the Pradhan of the concerned gram panchayat did not have any power to determine the legality of a construction in an area under the control of the Haldia Development Authority. He refers to Section 114A of the said Act of 1973.

Lastly, learned Advocate urges the Court to take cognizance of the fact that even the person who approached this Court objecting to the construction of the petitioner, did not have any permission to raise his own construction. He refers to the finding of the Pradhan with regard to the construction on plot Nos.714 and 715 of the said mouza.

Mr. Samad, learned Advocate appearing on behalf of the respondent No.8 submits that WPA 27925 of 2022 has been filed by his clients for implementation of the order of the Pradhan. According to Mr. Samad, the Pradhan had acted on the direction of this Court and as such, the order should be implemented. Admittedly, the petitioner had not obtained any sanction from the permission granting authority. Learned Advocate further

alleges that without conversion of the plots to '*bastu*', permission for construction could not have been granted.

Mr. Mookherji, learned Advocate appearing on behalf of the Pradhan submits that the Pradhan had come to a preliminary finding with regard to the allegations made by the respondent No.8. The Pradhan acted as per the direction of this Court. However, as the Pradhan is neither the permission granting authority nor the sanctioning authority, the order could not be implemented. He further submits that certain factual findings had been arrived at, but the Pradhan did not have any authority to take further steps with regard to the said construction. The panchayat samiti would be the appropriate authority.

Considering the rival contentions of the parties, the following facts are admitted:-

- (a) The petitioner had applied for development of plot No.712 of mouza Krishnanagar before the Haldia Development Authority as the area fell within the jurisdiction of the Haldia Development Authority.
- (b) The authority granted permission for a period of one year from the date of issue.

- (c) The Sutahata Panchayat Samiti would be the appropriate permission granting authority in terms of Section 114A of the said Act of 1973.
- (d) The order of the Pradhan cannot be implemented in view of the powers vested with the panchayat samiti by the said Act of 1973 and subsequent government samiti.
- (e) The construction over any land which has not been classified as '*bastu*', cannot be made.

First, the question as to whether the order of the Pradhan should be implemented or not, is answered in the negative. The findings of the Pradhan are factual findings by an authority with regard to the actual state of affairs and the physical condition of the site. The Court directed the Pradhan to reach the issue to its logical conclusion in terms of the statute. The next course of action for the Pradhan would have been to remit the entire issue before the panchayat samiti for a determination as per Section 114A of the said Act of 1973. This exercise was not done and in the meantime these litigations have arisen.

The contention of Mr. Ganguly with regard to the protection of the concerned structure in view of the

overriding effect of the said Act of 1979 is now taken up for consideration.

The said Act of 1979 is a piece of legislation which provides for planned development of rural and urban areas in West Bengal and deals with matters connected therewith or incidental thereto. It was expedient in public interest to provide for the planned development of rural and urban areas in West Bengal and hence the said Act of 1979 was promulgated.

Section 2(7) of the said Act of 1979 defines “development” as follows:

“(7). ‘development’ with its grammatical variations means the carrying out of building, engineering, mining or other operations, in, on, over, or under land or the making of any material change in any building or land or in the use of any building or land and includes division of any land.”

The Court concludes that any kind of activity either by carrying out construction of a building or engineering or mining operations, etc. would fall within the expression ‘development’. The permission that was granted to the petitioner under Section 46 of the said Act of 1979, was for use of the land for carrying out building activity for residential purpose as a ‘*bastu*’ land, within the planned area under the authority. Such permission was restricted to plot No.712. In the finding of the Pradhan, plot Nos.712

and 713 both have the constructions belonging to the petitioners and those have not been classified as '*bastu*'. The panchayat law is clear that no construction can be permitted without the land having been converted to '*bastu*'. The Haldia Development Authority granted permission to the petitioner to develop the land, meaning thereby, the petitioner's request for development of the land for residential purpose was acceded to. But, this would not negate the requirement of obtaining conversion as per law from the appropriate authority and necessary sanction from the permission granting authority under the provisions of the said Act of 1973.

Sub-section (3) of Section 46 of the said Act of 1979 provides that the development authority must consider the regulations made under Section 139 by panchayats or municipalities which were applicable to the lands on which the development is proposed.

Section 137 of the said Act of 1979 provides that the Act shall have an overriding effect, notwithstanding anything inconsistent therewith contained in any other law. The requirements of conversion, sanction of a building plan and permission to construct, are not inconsistent with the provisions of the Act. Sub-section (2) of the said Section reads as follows:

“137(2) Notwithstanding anything contained in any other law–

- (a) when permission for development in respect of any land has been obtained under this Act, such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under any other law for such development has not been obtained; this shall not, however, be construed as exemption to the application for permission and of payments of such fees and charges as required by such other law.”
- (b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained.”

Although Mr. Ganguly contends that when permission for development in respect of any land had been obtained under the provisions of the said Act of 1979, the construction could not be declared as illegal. Upon a reading of the said provisions, this Court is of the opinion that if permission to develop the land had been taken from the development authority, the authority could not hold the construction to be unlawfully undertaken or carried out by reason of the fact that the permission, approval or sanction required under any other law for such development, had not been obtained.

This means that the Haldia Development Authority which granted the permission under Section 46 of the said

Act of 1979 for development of the plot No.712 for a residential purpose as a '*bastu*' land, cannot declare the construction to be illegal on the ground that permission from the panchayat samiti had not been taken, or that the construction has been made on a '*doba*' or a '*pukur*'. The authority did not have any objection for development of the said plot No.712 for residential purpose, but such permission cannot be treated either as a sanction to a building plan or as an order of conversion. The permission was with regard to the development of a land. Permission to construct a building or grant sanction to a building plan by the permission granting authority are legal mandates which should have been complied with.

Sub-section (2) of Section 137 of the said Act of 1979 also states that the opening lines of the said sub-section would not be construed to be an exemption from making an application for permission, and from payments of fees and charges as required by the law relating to grant of permission/sanction to construct.

The petitioner had the permission to use the land within a planned area for residential purpose (*bastu*) from the authority and such permission was granted presumably upon taking into consideration the Land Use and Control Plan, but the same cannot be used as a shield

by the petitioner and/or as an exemption from applying before the relevant authorities for conversion and for permission to build according to the building rules, with the specification of heights, measurements, layout, frontal space, side space etc.

As the permission granting authority admittedly is the Sutahata Panchayat Samiti, the Pradhan of Guaberia Gram Panchayat shall forward all the documents to the Sutahata Panchayat Samiti and the competent authority of the Sutahata Panchayat Samiti shall decide the entire issue in accordance with law by following the procedure laid down hereinbelow:

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioner, a representative of the Haldia Development Authority and the respondent No.8, with 48 hours advance notice to the petitioner, Haldia Development Authority and the respondent No.8.
- b) A report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.

- c) Such report shall be handed over to the petitioner, Haldia Development Authority as also the respondent No.8.
- 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 and notifications issued by the state government in this regard.

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 claim of the petitioner and the issues raised shall be decided by the competent authority of the Sutahata Panchayat Samiti, District-Purba Medinipur, in accordance with law.

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

The order of the Pradhan shall not be construed as a final decision in the matter, but as a preliminary finding on the actual state of the site.

A copy of the writ petition along with a server copy of this order be served upon the Sabhapati, Sutahata Panchayat Samiti, District-Purba Medinipur.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

In view of the order passed in WPA No.659 of 2023, the writ petition being WPA No.27925 of 2022 is also disposed of and the order passed in WPA No.659 of 2023 will be applicable to the said writ petition.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)