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IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction

ORIGINAL SIDE

WPO(P)/2/2022
MANGAL SARDAR

-Versus-

THE STATE OF WEST BENGAL AND
ANR.

BEFORE :

THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 7th August, 2023

Appearance :
Mr.Srikanta Dutta, Adv.
..for the petitioner.

Mr.S.N. Mookherjee, Id. AG
Mr. T. M. Siddiqui, Adv.
..for the State.

The Court : By this public interest litigation the petitioner seeks for issuance of a Writ of Mandamus to declare rule 30 of the West Bengal Gram Panchayat Administration (Rules), 2004 as well as the amendment made in 2015 ultra vires the Constitution of India.

The Rule which is the subject matter of challenge in this writ petition reads as hereunder:

"(30) If permission or refusal under sub-rule (1A) and sub-rule (5) of rule 27, rule 28 or rule 29, as the case may be, has not been communicated by the Gram Panchayat within the prescribed time limit, it shall be presumed the Gram Panchayat has acceded such permission and the applicant shall after an intimation to the Gram Panchayat can erect any

structure or building conforming to the building plan and the site plan furnished by him along with the application".

It is the submission of the learned advocate for the petitioner that in the light of the above Rule, a deeming approval has been provided for which will result in clear abuse of the entire process of obtaining sanction for putting a building within the panchayat area. It is submitted that a comparison of Section 208 of the West Bengal Municipal Act, 1993 will clearly show that in the said provision there is no such deemed approval provided for and such a provision is conspicuously absent in rule 30 of the impugned Rule. Therefore, it is submitted that the Rule needs to be struck down.

We have heard the learned Advocate General on the above submission.

Firstly, in order to succeed in a challenge to a vires of an enactment, the petitioner has to bring his case under two heads, namely, either the State or the Centre lacks legislative competency to enact such a legislation. Secondly, the petitioner has to show that there has been a violation of the fundamental rights guaranteed in Part 3 of the Constitution of India. Admittedly, it is not the case of the petitioner that the State lacks legislative competency to frame the Rule. Therefore, on that ground the challenge to the impugned Rule has to be rejected. On the second ground,

namely, as to whether there is any violation of the fundamental rights guaranteed in the Constitution there is nothing specific brought on record by the petitioner to show that any of the fundamental rights have been violated or infringed. Therefore, on the second ground the petitioner has to necessarily fail. Even in such circumstances, the only option left is to uphold the validity of the Rule. As pointed out by the learned Advocate General, on and after coming into the force of the West Bengal Right to Public Services Act, 2013 checks and balance have been put in place wherein a party who provides the service has to show within a stipulated time. The Government of West Bengal has issued notification dated 25th November, 2020 in exercise of its powers conferred under Section 3(2) of the Public Services Act, 2013 in which specific time-lines have been prescribed for grant of permission for erection of a new structure or a new building in a panchayat area and the time-line has also been fixed for the Pradhan to act and in the event no action, the appellate officer has been provided for and there is also a reviewing officer. Thus, by reading the provisions of the West Bengal Right to Public Services Act, 2013 along with the rule 30 of the West Bengal Gram Panchayat Administration (Rules), 2004, it goes without saying that the authority has to process the application submitted by any person for seeking approval of the building plan within the time-lines fixed under rule 27 (1A) (5) and rules 28 and 29 of the Rules and precisely, the

Public Services Act has been enacted. That apart, under the Panchayat Administration Rules, there is also an embargo upto what height a building plan approval can be submitted to the panchayat for being granted. Assuming, an applicant submits a plan in violation of the height restrictions within the panchayat area, it is deemed that the concerned panchayat will have no jurisdiction to accept such application and such application shall be void in the eye of law. Therefore, there can never be a deemed approval under rule 30. Similarly, the authority will also have a power to inspect the building even assuming when deemed approval has been granted and if there is any illegal construction, the same can always be demolished. At this juncture, it is relevant to take note of the rule 33 of the Panchayat Administration Rules which provides for inspection of structures and building under constructions. This is also a sufficient safeguard to ensure that the illegal and unauthorised constructions are not put up.

The learned advocate appearing for the petitioner would submit that there are illegal constructions put up by encroaching government land or vested land. This is entirely a different issue. The person who is put up construction by encroaching the government property can claim no equities and the question of any deemed approval can never accrue in favour of a person who was not acted in equity, namely, rank trespasser or encroacher.

In the light of the above, the prayer as sought for to declare the impugned Rule as ultra vires cannot be granted. In the result, the writ petition is dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das/