

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**M.A.T. 42 of 2023
Sonali Kumar
Vs.
The State of West Bengal & Ors.
And**

**M.A.T. 101 of 2023
Sipra Mondal
Vs.
The Howrah Zilla Parishad & Ors.
And**

**M.A.T. 69 of 2023
Sukdeb Kumar
Vs.
The State of West Bengal & Ors.**

**Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray**

For the appellant in MAT 42 of
2023 & MAT 69 of 2023

Mr. Sandip Ghosh, Adv.
Mr. Subrata Das, Adv.
Mr. Debayan Ghosh, Adv.

For the Howrah Zilla Parishad in
all the appeals.

Ms. Mekhla Sinha, Adv.
Ms. Malabika Roy Dey, Adv.

For the appellant in MAT 101 of
2023 & for the private respondent
in MAT 42 of 2023 & MAT 69 of
2023.

Mr. Nilanjan Bhattacharya, Adv.
Mr. Abhilash Chatterjee, Adv.
Mr. Saikat Dey, Adv.

For the State in MAT 69 of 2023

Mr. Malay Singh, Adv.
Mr. Bibekananda Tripathy, Adv.

For Orders on

07.03.2024

Apurba Sinha Ray, J. :-

1. The above three mandamus appeals have been filed against the common judgment and order dated 15.12.2022 whereby WPA No. 35543 of 2013 (writ petition filed by Sonali Kumar) and WPA No. 4431 of 2019 (writ petition filed by Sipra Mandal) were, in effect, dismissed by a learned Judge of this Court.

2. The appellant Sonali Kumar had earlier filed writ petitions alleging that her contiguous land owner Smt. Sipra Mondal had raised unauthorized construction on her land without obtaining sanction from the concerned authority. In previous writ petitions the Hon'ble High Court had directed the Howrah Zilla Parishad to take steps against the illegal and unauthorized construction made by the respondent no. 6, Smt. Sipra Mondal and the authority was further directed to demolish such unauthorized construction of Smt. Sipra Mondal. However, by filing another writ petition the said Sipra Mondal alleged that the appellant Sonali Kumar and her husband also raised unauthorized construction in their property without obtaining proper sanction plan. In an appropriate proceeding the Howrah Zilla Parishad was directed to take necessary action in respect of both the constructions in accordance with law if they were found to be unauthorized. Accordingly, the Authority issued demolition notices to

both the parties mentioned above and directed them to cause self demolition otherwise, the law will take its own course.

3. In the present round of litigation the appellant, Sonali Kumar has come up with the instant writ petition stating that the notice for demolition issued by the Municipal Authority is, in fact, a counter blast to the steps taken against Sipra Mondal at the instance of the appellant Sonali Kumar. The appellant has argued that initially the appellant and her husband owned two contiguous plots respectively and both of them constructed buildings thereon after obtaining relevant sanctioned plans. However, for sake of convenient use, they amalgamated both the properties and thereafter, made certain additions and alterations after executing a deed of amalgamation. The factum of amalgamation as well as the construction made were duly reported to the Panchayat Authority but as they did not approve or reject the 'as made plan', the plan was deemed to have been sanctioned after expiry of 30 days from the date of submission of such plan in view of Rule 30 of West Bengal Panchayet (Gram Panchayet Rules, 1981).

4. According to the learned counsel for the appellant Mr. Ghosh, the learned Trial Judge did not consider this fact properly. The rules have specifically mentioned that an applicant can file 'as made plan'

even after construction was over and by virtue of such provision, the appellant submitted the said plan which is called 'as made plan' before the authority. Such provisions of the Rule empower the appellant to file 'as made plan' after construction is over, and as such there is no illegality committed on the part of the appellant.

5. The learned counsel for the appellant has submitted that initially only the construction of the respondent no. 6 was ordered to be demolished but the concerned authority has issued notices to the present appellant and her husband, being instigated by the respondent no. 6, to remove the alleged unauthorized construction in the amalgamated plot of the appellant and her husband. The learned counsel also pointed out that a copy of the said demolition notice was also marked to the respondent no. 6, Sipra Mondal which shows that such action against the appellants was taken at the instance of the respondent no. 6, who is a politically influential person.

6. The learned counsel for the appellant contended that dismissal of the writ petitions gives rise to several questions of law to be decided in this appeal.

I. Whether the amalgamated revised plan dated 22.05.2006 could be cancelled by the Zilla Parishad?

II. Whether Rule 30 of the West Bengal Panchayet (Gram Panchayet Administration) Rules, 2004 (hereinafter referred to as 2004 Rules) is applicable in the instant case?

III. Whether the Zilla Parishad Bye-Law, 2005 was introduced, in accordance with law and whether it has got any legal force?

IV. Whether the revised plan submitted by Sonali and Sukdeb on 22.05.2006 on the amalgamated plot should be presumed to have been sanctioned in tune with the 2004 Rules?

V. Whether the revised 'as made plan' is covered under Rule 15 of the Zilla Parishad Bye-Law, 2005?

VI. Whether the impugned judgment and order is at all sustainable in law?

VII. Whether the Court should go by the legislative intent and spirit of the Rules and Bye-Laws?

7. The learned counsel further submitted that the Zilla Parishad cannot question the amalgamation at any stage after submission of the revised building plan. He relied upon Rules 27 and 28 of the said Rules, 2004. Rule 27 prescribes that such sanction needs to be accorded within a period of 30 days from the date of receipt of the plan

whereas Rule 30 prescribes that unless such permission or refusal under Rule 27 (5) is communicated by the Gram Panchayet within the prescribed time limit, it shall be presumed that such sanction has been accorded. In the instant case, the revised building plan having not either been sanctioned or rejected in writing, such provision is squarely applicable to the appellants namely, Sonali Kumar and her husband Sukdeb Kumar.

8. It is also contended that in view of Article 13(3)(a) of the Constitution of India the term 'law' includes Bye-Laws framed under Section 223 of the West Bengal Panchayet Act, 1973. The Howrah Zilla Parishad has consciously introduced Clause 15 in such Bye-Laws of 2005, since the word 'as made' in respect of new plan or erection of a new plot etc. was not available in Rule 17 of the 2004 Rules, and that being so, perhaps in order to regularize any construction within the territory of Howrah Zilla Parishad it has given some laxities which are not inconsistent with the Rule or Bye-Laws.

9. The learned counsel for the appellants submitted that the appellants applied for sanction of revised plan during the validity of the original sanction plan which they could lawfully submit before the Howrah Zilla Parishad routed through the concerned gram panchayat which granted the receipt on 22.05.2006 being the date of application

for such revised building plan. According to the learned counsel, the learned single judge did not appreciate that this Court from time to time directed the Zilla Parishad to enquire into the construction of the appellants' building plan and if law so warrants, to take steps for demolition of the same or part thereof. In the instant case, it is clear that the action on the part of the Zillah Parishad was nothing but counter-blast at the behest of the respondent no. 6. The learned Single Judge has relied upon certain decisions of the Hon'ble Supreme Court which relate to multi-storied buildings erected by promoters/developers in violation of the sanction building plan or in violation of the relevant building rules. The ratio of such judgments does not apply in the case of the appellants. The learned Single Judge did not consider that two show cause notices issued by the Zillah Parishad are of identical nature.

10. It is also argued by the learned counsel of the appellants that the settled principle of law is that the court should stand by the legislative intent. When the legislature enacts a rule or Bye law, the same should be honoured in its letter and spirit after keeping in view the intention of the legislature. In the instant case, Rule 30 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 as also clause 15 of the Howrah Zilla Parishad Bye Law, 2005 having been enacted with the legislative wisdom and intent should have been

considered in its proper perspective. In support of his contention the judicial decisions reported in 1920 SCC OnLine PC 10 = AIR 1920 PC 181 (paras 10 and 11) (Quebec Railway, Light, Heat and Power Company Limited Vs. Vandry & Ors.), (1987) 3 SCC 279 para 9 (Utkal Contractors and Joinery Pvt. Ltd. & Ors. Vs. State of Orissa and Ors.) etc., (1997) 3 SCC 511 (paras 6 and 7) (Mohammad Ali Khan & Ors. Vs. Commissioner of Wealth Tax New Delhi) have been referred to.

11. The learned counsel has also submitted that Rule 30 of the Rules 2004 has been declared intra vires by the order dated 07.08.2023 passed by the Division Bench of this Hon'ble Court presided over by the Hon'ble Chief Justice in a public interest litigation being WPO (P)/2/2022 (Mongal Sardar Vs. The State of West of Bengal & Anr.).

12. As regards the appeal of the respondent no. 6 Smt. Sipra Mondal (MAT 101/2023), the learned counsel for the appellants has submitted that the respondent no. 6 admittedly did not at any point of time prior to filing of her writ petition ever ask for any permission from the gram panchayat or Zilla Parishad after knowing fully well that the authority could not give her permission to raise construction on 8 chittacks of land (360 sq.ft.) and as such in view of several decisions in connection with the matter the construction of respondent no. 6 is required to be

demolished in its entirety. In spite of several undertakings given from the side of the Zillah Parishad, the Parishad did not take any step for demolition of the building of the respondent no. 6. Learned Advocate for the appellant referred to the submission made by learned Counsel for the respondent no. 6 to the effect that under the Bye-laws, 2005, the Zilla Parishad has the power to allow retention subject to certain conditions. The Zilla Parishad, should exercise such power in favour of all three concerned persons namely Sonali, Sukhdeb and Sipra (respondent no. 6) and allow retention of the alleged unauthorized constructions raised by them. Learned Advocate for the appellant submitted that such submission made on behalf of the respondent no. 6 has no legal basis.

13. So far as the submission in respect of the appeal of Sukdeb Kumar (MAT 69 of 2023) is concerned, the learned counsel for the appellants has submitted that the revised building plan on the amalgamated plot having been submitted jointly by Sonali Kumar and Sukdeb Kumar, the said building plan is deemed to have been sanctioned in accordance with Rule 30 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 or even if the provisions of rule 15 of Bye law of 2005 are applied, the same will cover both the appeals and the same should be disposed of accordingly.

14. The learned counsel finally submitted that this Hon'ble Court should set aside the impugned judgment and order and uphold the sanctioned plan of the appellants' building on the amalgamated plot in accordance with Rule 30 of the 2004 Rules and also clause 15 of Howrah Zillah Parishad Bye laws, 2005 and further, the building of the respondent no. 6 should be directed to be demolished forthwith.

15. The learned counsel for the respondent no. 6, on the other hand, submitted that admittedly the construction on the land of respondent no. 6 was unauthorized and prayer for regularization was made from the side of the respondent no. 6. If the appellants are allowed to retain their unauthorized construction in that case the respondent no. 6 should also be allowed to retain her construction. It is also argued by the learned counsel that from the report of the Sub-Assistant Engineer of Howrah Zillah Parishad, dated November 7, 2013, and also from the report of the Assistant Engineer dated June 12, 2013, it transpires that Sukdeb Kumar and Sonali Kumar submitted an amalgamated G+1 building plan in respect of Dag No. 291 (RS), corresponding to L.R. Dag No. 314 under Khatian No. 84 (RS) corresponding to L.R. Khatian No. 1812 together with R.S. Dag No. 291 corresponding to L.R. Dag No. 314 under L.R. Khatian No. 2121/1, Mouza- Podra, J.L. No. 38, Police Station- Sankrail, District- Howrah.

It is found from the submitted amalgamated plan that the total measurement of the land is 3 Cottah 0 Chittak- 5 Square Feet, i.e. 201.20 Square Meter in which existing construction of ground floor area is 183.89 Square Meter and it covers more than 91% of total ground floor land.

As per plan the open spaces of the building are as follows:-

201.20 sq. meter in which existing construction of ground floor area is 183.89 sq. meter and it covers

East (Front side)-0 (nil) Instead of 500mm

West (Back/Rear side)-815mm Instead of 2000mm

North (Side-1)-600mm Instead of 1000mm

South (Side-2)-Nil instead of 1000 mm

As such, the Zilla Parishad did not sanction the amalgamated building plan due to safety, fire and environment as well as insufficient clearance.

So, the Howrah Zilla Parishad cancelled the sanction of the amalgamated existing (G+1) storied building plan of the appellants culminating in the two appeals being no. 42 of 2023 and 69 of 2023.

From the report of the Sub-Assistant Engineer, Howrah Zilla Parishad, it was also found by the Howrah Zilla Parishad that the sanction of

construction area is 120.508 square meter and land area 1 Katha, 8 chittack, 02 square feet at Dag No. 291 (R.S.), 314 (L.R.), Kh No.-2121/1, J.L. No. 38, Mouza Podra, P.S.-Sankrail within Thanamakua Gram Panchayat. The existing (G+1) storied structural area is 191.52sqm and hence 71.022sqm area is unauthorized portion remains. The details of the unauthorized portions (deviated) are as follows.

East Side: 3.0.m x 0.60m
3.90m x 0.23m

West Side: 8.998m x 2m

South Side: 6.739m x 0.70m
7.596m x 1.0m

North Side: 6.782m x 0.50m

Hence the Howrah Zilla Parishad directed Smt. Sonali Kumar to demolish the aforesaid unauthorized extended portion within 3 (three) weeks at her own cost from the date of receipt of the order as the existing building does not conform to the sanctioned plan and is deviated in all respects.

It was further found by the Howrah Zilla Parishad that Sukdeb Kumar has constructed an unauthorized. G+1 storied structure at Dag No. 291 (R.S.), 314 (L.R.) Kh. No.-84 (R.S.), 1812 (L.R.), Mouza- Podra, J.L.

No.-38, P.S.-Sankrail, Dist.- Howrah and he was also directed to demolish the aforesaid unauthorized portion of structure within 3 (three) weeks from the date of receipt of this order at his own cost.

Court's View:-

16. From the above submission and counter-submission and also from the materials on record it transpires that both the parties have raised unauthorized construction in their respective lands. Admittedly the respondent No. 6 Sipra Mondal raised construction in a small piece of land without any sanctioned plan from the concerned authority, and in several writ petitions, the Hon'ble Court directed the authority to demolish such unauthorized construction. As the respondent no. 6 is not entitled to raise any permanent pucca structure on such a small piece of land ($1/2$ cottah), the question of retention of such permanent pucca structure does not arise.

17. The learned counsel for the appellants on the other hand has heavily relied upon rules 17, 27 and 30 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 and has submitted that as the revised plan submitted by the appellants regarding construction on their amalgamated plots was neither approved nor rejected, the 'as made plan' as reflected in rule 15 of Howrah Zilla Parishad Bye laws

2005 is applicable and by virtue of rule 30 of West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 such plan shall be deemed to have been approved by the concerned authorities.

18. The learned counsel has also relied upon several judicial decisions contending that the legislative intent in framing the laws, Bye laws should be respected by the court and the provisions of law should be interpreted to uphold such legislative intent. In other words, the learned counsel for the appellants has tried to impress upon this court that what the appellants did were in accordance with the provisions of law which empowered them to submit 'as made plan' and further, since such 'as made plan' submitted by the appellants remained unanswered for more than 30 days, rule 30 of Rules 2004 will come into play. The appellants acted in accordance with law and when law allows such privileges, the appellants are entitled to reap such benefits. The question of illegality could have arisen if such 'as made plan' submitted by the appellants was rejected by the authority. But without rejecting the same within the stipulated period, the authority cannot at this stage, pass any order rejecting the 'as made plan' which was submitted on 22.05.2006.

19. Now let us see how much law abiding citizens the appellants are!

Rule 17 of West Bengal Panchayat (Gram Panchayat Administration)

Rules, 2004 reads of as hereunder:-

“17. Application in Form 4.-(1) *Subject to the provisions of rule 20, any person intending to erect a new structure or a new building or to make any addition to an existing structure or building in any area within the jurisdiction of a Gram, shall, for obtaining prior permission in writing of the concerned Gram Panchayat, make an application, in duplicate, in Form 4 to the Gram Panchayat. The Secretary or any other employee of the Gram Panchayat authorised by the Pradhan in this behalf, shall receive the application, in duplicate; retain one copy of it and return the other copy noting thereon the date of receipt under his signature and the seal of the Gram Panchayat.*

(2) An application in Form 4 shall be submitted along with a plan in duplicate, of the proposed structure or building, a site plan in duplicate, copy of records-of-right, and copy of such other records showing title and interest of the applicant in respect of the land as may be necessary.

(3) Copies of Form 4 shall be supplied on demand by the Gram Panchayat to any intending applicant at a non-profit making price to be fixed by the committee referred to in sub-rule (1) of rule 10 of the West Bengal Panchayat (Gram Panchayat Miscellaneous Accounts and Audit) Rules, 1990; the Secretary shall maintain the accounts of the stock of Form 4.

(4) Notwithstanding anything contained in sub-rule (3) any person may submit his application in Form 4 under sub-rule (1) in manuscript, typewritten or otherwise mechanically prepared copy of the Form.”

20. Rule 27 of the above Rules 2004 may be quoted as hereunder:-

“27. Manner of processing of an application.”-(1) On presentation of an application under sub-rule (1) of rule 17, the Pradhan or the Upa-Pradhan or any other member authorised by the Gram Panchayat in this behalf, shall examine the right, title and interest of the applicant in respect of the land on which the structure or the building i.s. proposed to be erected along with the building plan and the site plan, and, after such enquiry as may be considered necessary, shall within a period of thirty days from the date of receipt of the application, place it before the Gram Panchayat for granting or, as the case may be, refusing permission for the erection or construction applied for.

(1A) A Gram Panchayat shall not accord permission to the construction of a new structure or building or to make addition or alteration to an existing structure or building having a plinth area of more than 150 square meters with brick or concrete footing or a height of more than 6.5 meter without vetting of the building plan and the site plan by the Panchayat Samiti or the Zilla Parishad having jurisdiction:

Provided that an application for construction of a new structure or building or making an addition or alteration of the existing structure or building having a plinth area of more than 150 square meters but less than 300 square meters with brick or concrete footing or a height not more than 6.5 meter shall be sent with all documents to the Panchayat Samiti and for construction beyond that plinth area or height or both, the application shall be sent to the Zilla Parishad by the Gram Panchayat for vetting:

Provided further that the applications, which are required to be vetted by the Panchayat

Samiti or the Zilla Parishad, shall be sent by the Gram Panchayat within a period of thirty days from the date of such receipt to the Panchayat Samiti or Zilla Parishad as the case may be and shall be returned by the appropriate body with its vetting or objections as the case may be, to the Gram Panchayat within a period of thirty days from the date of its receipt for further action under sub-rule (2).

Explanation. For the purpose of this rule a structure or building includes a tower, godown and underground floor or storage."

21. Rule 30 of Rules 2004 is as hereunder:-

"30. Right of application if the permission or refusal is not communicated within time-limit. *If permission or refusal under sub-rule (5) of rule 27, rule 28 or rule 29 as the case may be, is not communicated by the Gram Panchayat within the prescribed time limit it shall be presumed that the Gram Panchayat has accorded such permission and it shall be lawful for the applicant to erect any structure or building conforming to the building plan and the site plan furnished by him along with the application."*

22. All the above provisions have laid down that an appropriate application praying for, inter alia, additions, alteration to an existing structure or building may be allowed by the concerned authority within a period of 30 days from the date of receipt of the application and if permission or refusal is not communicated to the applicant within the prescribed time limit it shall be presumed that the authority has accorded such permission and it shall be lawful for the applicant

to erect any structure or building conforming to the building plan and the site plan furnished by him along with the application. The above provisions support the contention of the learned counsel of the appellants to some extent, but if we scrutinize the above provision we shall find that rule 17 has enjoined upon the applicant to submit the appropriate application, in duplicate, in form no. 4 appended to the said Rules 2004.

23. Now let us go through form 4 and its contents. As per rule 17 the contents of the form 4 are as hereunder:-

*“FORM 4
[See rule 17]*

*Form of application for permission to erect structure/building or to make
an addition/ alteration to an existing structure/building
in a Gram Panchayat*

(To be submitted in duplicate)

.....Gram Panchayat

To
The Pradhan
.....Gram Panchayat

*I hereby apply for permission to erect a new structure/building/ to make
addition/alteration to an existing structure/ building on a land covered
by C.S./R.S. plot Nos.of mouza..... of jurisdiction list
Noof Police Station.....the boundaries of which are
shown below, on payment of the fee of Rs. as deposited by
me.*

Boundaries:

East-

West-

North-

South-

2. I hereby declare that I have unencumbered right, title and interest in the land on which the structure/building is proposed to be constructed/on which the existing building/structure stands to which additions/alterations are proposed to be made. I am enclosing copies of documents in support of the claim.

3. I hereby undertake to raise the walls of the proposed structure/building at a distance of at least nine-tenth meter from all sides of boundaries.

4. I am enclosing two/three copies of site plan and building plan for the proposed construction.

5. I further undertake hereby to make construction strictly following the building plan submitted with such modifications as may be directed by the Gram Panchayat.

6. I also hereby declare that I am not creating any structure/building within Kolkata metropolitan area or near or in the vicinity of any aerodrome tending to hazard or near any other prohibited area.

7. I also hereby undertake that I shall not start the construction work before receipt of permission of the Gram Panchayat with the approved copy of the building plan or before the expiry of the statutory period of according such approval.

8. I also hereby undertake to make payment of further fee as may be directed by the Gram Panchayat in accordance with the rules and procedure (Strike out the words not applicable.)

Signature.....

Name in Block letters.

Address.....

Date.....”

24. From the above it appears that the appellants were under a duty to submit the requisite application along with duly filled in Form no. 4. Clause 3 of the said Form no. 4 shows that the appellants are duty bound to raise the walls of the proposed structure/building at a distance of at least 9/10th metre from all sides of boundaries. If that be so the appellants have to show that they have complied with such a condition as laid down in clause 3, Form no. 4. It appears from the report dated 07.12.2022 issued by the Assistant Engineer Howrah Zilla Parishad that the appellants did not keep any side space in the eastern side as well as on the southern side of the said building. The side spaces on the western side and northern side are also not in accordance with the norms. The report is quoted as hereunder:-

*“OFFICE OF THE ZILLA PARISHAD, HOWRAH
10, Biplabi Haren Ghosh Sarani, Howrah – 1.*

R E P O R T

WPA No. 35543 of 2013

Smt. Sipra Mondal

Vs.

The State of West Bengal & Ors.

With

WPA No. 4431 of 2019

Smt. Sipra Mondal

Vs.

The Howrah Zilla Parishad & Ors.

Smt. Sipra Mondal has erected one G+1 storied building with a temporary room (125 mm thick wall with asbestors shed) at 2nd floor upon her ½ Katha (08 satak) land situated at dag no 291 RS 314 (LR), Khatian No.-3001, Mouza-Podra, JL No.-38, Dist.- Howrah.

She applied for regularization of the said building before the Zilla Parishad on 26/11/2012 and 18/11/2013 respectively, but due to insufficient open spaces, the plan was not given sanctioned. Xerox copy of sketch map for unauthorized structure is attached herewith.

In connection to order dated 13/06/2018 of Hon'ble Justice Harish Tandon and w.r.t WPA No. 35543 of 2013, Smt. Sipra Mondal was directed to demolish her structure vide order no. 401/009/E dated 13/02/2019 of Howrah Zilla Parishad. But she has not compiled the order till date and Zilla Parishad could not take any further action due to pendency of W.P.A. No. 4431 of 2019.

As per order of Hon'ble High Court dated 13/06/2018 a hearing was made on 19/02/2019 at 3.00 pm at the chamber of District Engineer, Howrah Zilla Parishad.

On the other hand, Smt. Sonali Kumar and Sri Sukdev Kumar submitted an amalgamated G+1 storied building plan under dag no. 291 (RS), corresponding to LR dag no. 314 under Khatian No. 84 (RS) corresponding to L.R. Khatian no. 1812 together with R.S. dag no. 291, corresponding to LR No. 314 under L.R. Khatian No. 2121/1, Mouza-Podra, J.L-38, P.S.- Sankrail, Dist- Howrah.

It is found from the submitted amalgamated plan that the total measurement of the land is 3 katta 06 Chata -5 sqft. i.e. 226.24 sq. meter, in which existing construction of ground floor area is 183.89 sq. meter and it covers more than 81% of total land area. As per plan the open space of the existing building is insufficient.

East (Front side) - 0 (nil) instead of 500mm

West (Back/Rear side)-815 mm instead of 2000 mm

North(Side-1)-600mm Instead of 1000mm

South (Side-2) - Nil Instead of 1000mm

Hence, the Zilla Parishad was unable to sanction the amalgamated building plan due to safety of fire & environment as well as insufficient clearance.

From the submitted sanction plan of Smt. Sonali Kumar it is found that, sanction of construction area is 120.508 sq. meter and land area 1

Katta 8 Chattak 2 sqft. at dag no. 291 (RS), 314 (LR), Khatian No 2121/1, J.L. No- 38, Mouza - Podra, P.S Sankrail within Thanamakuah G.P. The existing |G+1| storied structure with a temporary asbestos shed at 2nd floor, structural area is 191.52 sq. meter and hence 71.022 sq. meter i.e. (764 sq.ft.) area is unauthorized portion. The detail of the unauthorised portions (deviated) are as follows.

*East Side : 3.0m x 0.60m
 3.90m x 0.23m*

West Side : 8.998m x 2m

*South Side: 6.739m x 0.70m
 7.96m x 1m*

North Side : 6.782m x 0.50m

Xerox copy of sketch map for unauthorized structure portion is attached herewith. The existing building does not conform to the sanctioned plan. It has deviated in all respect.

Sukdeb Kumar has constructed an unauthorized G+1 storied structure with a RCC structure (temple) at 2nd floor at dag no. 291 (RS), 314 (LR), Khatian No. 84 (RS), 1812 (LR), Mouza - Podra, J.L No.-38 PS. Sankrail, Dist-Howrah.

Xerox copy of sketch map for unauthorized structure is attached herewith.

Smt. Sonali Kumar and Sri Sukdev Kumar were directed to demolish their structure vide order no 502/009/3/E dated 22/02/2019 of Howrah Zilla Parishad. But they did not complied the order date and Zilla Parishad could not take any further action due to pendency of Writ Petition.

*Assistant Engineer
Howrah Zilla Parishad”*

25. Therefore the appellants have themselves violated the provisions of law since they have not complied with the provisions of rule 17 wherein the appellants are enjoined to submit the application along

with duly filled in Form no. 4. Even at the cost of repetition we should say that by virtue of provisions of such rule the appellants are obliged to keep side spaces as required in paragraph 3 of Form no. 4.

26. It is true that such application along with revised plan has remained unanswered for several years but that does not give a right to the appellants to claim the benefit of rule 30 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004. In other words had the appellants submitted the revised plan in terms of Form no. 4, they could have claimed the benefit as espoused in rule 30 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 but as there are sufficient materials to show that the conditions of Rule 17 have not been complied with by the appellants, in our opinion, they are not entitled to the benefit as provided in rule 30 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004. In other words the legislative intent in respect of rules 17, 27 and 30 of the Rules 2004 is that the applicant should comply with the conditions as reflected in rule 17 along with the conditions mentioned in Form no. 4. It is not the desire of the legislature that an applicant is entitled to submit any application of his or her choice to the panchayat authority without complying with the conditions as mentioned in rule 17, read with Form no. 4 and if the said revised plan remains unanswered due to sheer callousness of the panchayat authority or

due to some extraneous factors, the authority or the society at large is bound to accept the said plan as legal. This is not the legislative intent as we find in rules 17, 27 and 30. The appellants at first are to show that they have complied with the conditions as laid down in rule 17 read with form no. 4 of the Rules 2004. Had they complied with the directions as aforesaid and if the authority failed to approve or reject the application within 30 days, the question of deemed sanction would have arisen. But such is not the case here since the report shows that the appellants raised construction without keeping any side spaces at least on two sides of their building and further they have also kept very little space on other two sides of the building. In our considered opinion the appellants are not entitled to the benefit of rule 30 of the Rules 2004.

27. Moreover, from the report dated 07.12.2022 it transpires that the construction of the appellants covers more than 80% of the total land area. It is pertinent to mention that learned counsel for the appellants had relied upon a resolution adopted at a meeting vide Memo No. 557/BP dated 07.01.2011 and the letter dated 24.01.2011 issued by the Assistant Engineer to several functionaries of Howrah Zilla Parishad after enclosing the above resolution. From the said resolution it transpires that permissible ground coverage in case of residential building for the plot size from 200 sq.m. to 500 sq.m. is

60% of the land. As the two plots of Sonali Kumar and Sukdeb Kumar are amalgamated and the area of amalgamated plot has become 3 cottah 6 chatack 5 sq.ft. that means the plot size is about 202 sq.m. and further it is reported that the existing construction of ground floor area found in an area measuring 183.89 sq.m. which covers more than 90% of the total ground floor. This is certainly a serious deviation.

28. Much argument has been submitted from the side of the appellants regarding Rule 15 under Chapter 4 of Howrah Zilla Parishad Bye Laws, 2005. Rule 15 of the above Bye Laws may be quoted as hereunder:-

“If any building is being constructed without Sanction from this Parishad before this byelaw comes into force or without any permission from Panchyat level, the applicant may regularize the said case from this Parishad by submitting as made plan with development fees or fines or both, as below.

(a) For residential building @ Rs. 30/- m² (fine only)

(b) Industrial or commercial building @ Rs. 50/- m² with a fine of Rs. 60/- m².

If deviation is made in construction as stated in byelaws (F.A.R., clearance etc.) after coming into force of this byelaw, a fine of Rs. 600/- m² is to be imposed on deviated portion (i.e. F.A.R., clearance) etc.

If any residential building is constructed without sanction from this Parishad after

implementation of this byelaw, a development fee of Rs. 30/-m² with a fine of Rs. 30/- m² is to be paid by the applicant.”

Therefore, the above rule has laid down the provision for regularization. However, be it mentioned that whatever the intention of the makers of the Howrah Zilla Bye Laws, 2005 be, the same cannot override the provisions of Rule 17, read with the contents of Form No. 4 of West Bengal Panchayat (Gram Panchayet Administration) Rules, 2004. In other words, the essential basic parameters for proposed construction have been laid down in Rule 17 and in the contents of Form No. 4 as aforesaid, and if such basic parameters are not maintained in constructing a building, Rule 15 of Bye Laws, 2005 will be of little help. The term ‘deviation’ in Rule 15 of Bye Laws cannot include every type of deviation including not keeping side spaces, more ground coverage than permissible limit etc. Bye laws have little power to make inroad into the provisions of statutes or statutory Rules from which the same derive their authority. In other words the provisions of Bye laws cannot militate against the Rule/Act under which they are framed.

29. Furthermore, the concept of ‘as made plan’ found in Howrah Zilla Bye Laws 2005 is a new one and the same is not found anywhere within the four corners of West Bengal Panchayat (Gram Panchayet Administration) Rules, 2004. The appellants have argued in such a

manner that rule 15 of Bye laws 2005 is a supplementary provision to Rule 17 of the Rules 2004 as aforesaid. In fact Bye laws 2005 have been enacted only to receive certain financial benefits for the coffers of Howrah Zilla Parishad, and by virtue of such provision, some 'minor' deviation may be regularized on payment of such fees as may be prescribed subject to the discretion of the Zilla Parishad but that does not mean that the Zilla Parishad can regularize each and every type of unauthorized construction which seriously violates the provisions of Rule 17, read with Form No. 4, of Rules 2004. Rule 15 of the said Bye laws may be used for regularization of 'minor' deviations only.

30. In any event, there is no application submitted by the appellants before the concerned authority praying for relief under Rule 15 of Howrah Zilla Parishad Bye laws, 2005. In other words there is no prayer for retention of the deviated portion of the construction. As there is no application filed by the appellants, the question of retention of the unauthorized construction does not arise.

31. In fine, we find that the impugned constructions raised by Sonali, Sukdeb and Sipra, are all unauthorized and incapable of being legalized as per the applicable building rules. We, therefore, find no infirmity in the conclusion reached by the learned Single Judge. We agree with such conclusion may be for different reasons as indicated

above. We affirm the judgment and order under appeal. Consequently, all the three appeals being M.A.T. 42 of 2023, M.A.T. 101 of 2023 and M.A.T. 69 of 2023 are dismissed. There will be no order as to costs.

32. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)