

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 5508 of 2024

Dimple Sarawgi & Ors.
Vs.
The State of West Bengal & Ors.

For the writ petitioners	:-	Mr. Srinjoy Das, Adv. Mr. Saroj Banerjee, Adv. Mr. Arbind Singh, Adv. Mr. Jui Jana, Adv.
For the State	:-	Mr. Santanu Kumar Mitra, Sr. Govt. Adv. Mr. Amartya Pal, Adv.
Heard on	:-	08.03.2024 & 08.04.2024
Judgment on	:-	19.04.2024

Amrita Sinha, J.:-

The order dated 16th January, 2024 passed by the Additional Executive Officer, Purulia Zilla Parishad directing the petitioners to restrict construction up to the B+G+1 storey level residential building despite granting permission for construction of B+G+4 storied residential cum commercial building is impugned in the instant writ petition.

Learned advocate for the petitioners submits that the construction is being made in accordance with the plan sanctioned. At the time of submitting the plan proposal the respondent authorities did not raise any objection and sanctioned plan for construction of B+G+4 storied building. On the basis of the said sanctioned plan, the plinth and the base level of the

construction has been made with the view to construct B+G+4 storied building. Had the respondents not granted sanction for the said construction, then the petitioners would not have been required to construct the base and the plinth in the manner as it has been done. Considerable finance has been invested in preparation of the base and ground level work so that the building could support the load of construction of the B+G+4 storied building.

It has been contended that there is no provision in law restricting or refusing permission to make construction after a certain limit and, as such, the petitioners may be permitted to continue with the construction work in accordance with the plan sanctioned.

It has been argued that the Zilla Parishad sanctioned the building plan after consideration of all the provision of law and now only at the insistence of the police, the Zilla Parishad restricted construction which is absolutely bad in law and ought to be set aside.

The petitioners rely upon the Police Order No. 01 of 2011 issued by the Director General and Inspector General of Police, West Bengal mentioning that the Regional Command Centre and Training Centre of Counter Insurgency Force, West Bengal will be located at Charrah in the district of Purulia after shifting of Battalion headquarters of SAP 11th Battalion and 13th Battalion therefrom to Barjora, Bankura.

Reliance has also been placed on the Police Order No. 17 of 2011 issued by the Director General and Inspector General of Police mentioning

that there has been massive escalation in violent activities against security forces, government installations and innocent people by Left Wing Extremists. The training in Counter Insurgency shall be conducted at the West Bengal Counter Insurgency Training Centre which is expected to shift to Charrah, Purulia after some time.

The Police Order No. 01 of 2012 by the DG and IG, WB has been placed which mentions that the Regional Command Centre and the Training Centre of Counter Insurgency Force, West Bengal will be located at EFR Brigade Campus Salua, district Paschim Medinipur instead of Charrah in the district of Purulia. Police Order No. 01 of 2012 has been passed in cancellation of the Police Order No. 01 of 2011.

It has been submitted that as the Training Centre has been moved from the district of Purulia to the district of Paschim Medinipur, as such, the reason for imposing restriction on construction do not hold good at this stage.

Prayer has been made by the petitioners to permit them to continue with the work of construction as per the sanctioned building plan and the petitioners undertake before this Court that they would carry on construction strictly on the basis of the plan sanctioned and not in deviation thereof.

The learned senior government advocate vehemently opposes the prayer of the petitioners.

The primary reason for imposing such restriction is the existence of i) many vital offices like: a) Office of the Superintendent of Police, b) Office of the Addl. Superintendent of Police, c) Office of the Dy. Superintendent of Police, d) RI Office, e) Reserve Office, f) Motor transfer office, g) Motor Transport Garage, h) Major Office, i) Home Guard Office, j) Conference Hall etc. are there inside Belguma police lines.

ii) District Police Armoury, one of the most sensitive installations is there inside Belguma police line.

iii) Beside the office building, some other important buildings like senior officer's guest house, bungalow of Addl. Superintendent of Police, Dy. Superintendent of Police, Govt. quarter of the officers and force, barrack for force, Govt. quarter for surrendered maoist, gym for officer and force and senior too, indoor playing court for senior officers, subsidiary canteen, LPG Gas godown are also there.

iv) One temporary helipad which is mostly used during visit of Hon'ble CM, West Bengal to this district is also situated in close proximity of the proposed site and is a huge concern. The ground is mostly chosen as the venue for meeting of Hon'ble CM, WB.

v) The only parade ground for district police is also inside of the Belguma police lines and the activities like police training, monk arms drill, important briefing etc, beside police parade are routinely done there and it demands a bit of confidentiality.

vi) Beside vital installation and offices, Belguma police line is vulnerable for its Maoist threats. Purulia district was badly affected by PWG and Maoist since 1988-2012 and it witnessed fierce incidence of murder, arson, looting of arms in Jungle Mahal areas. As many as 60 persons were killed and so many were injured during this horrible period. Though Maoist activities in Purulia, like other part of Bengal, have come down to zero level for various reasons but its threat is not over. Still now Maoist makes their presence felt in neighboring states and Purulia is still their place of hunting for strategic location. The police have to remain extremely alert regarding this menace. Very recently one of the topmost Maoist leader, namely Sabyasachi Goswami @ Ajay da @ Kishore @ Babu, was arrested from Baghmundi PS area with literature of the banned organisation, arms and ammunition etc. Interrogation disclosed that he came there to recruit new people in their organisation and rejuvenate it in the Jungle Mahal area. Belguma police lines bear paramount importance as regard to its safety and security. Evidently any high-rise building juxtaposition to such high security area is a challenge to its security.

The Additional Superintendent of Police (H.Q), Purulia strongly opposed the idea of granting any licence or sanction for construction of proposed high-rise building. At present construction of B+G+1 stage is complete and request has been made to stop any further construction.

It has been submitted that the Superintendent of Police, Purulia repeatedly objected against the construction of the said high-rise apprehending serious security threat issues. The construction site is located just opposite to the entry gate of Belguma Police Line, Headquarters of Purulia District Police which is a Maoist affected area. If the B+G+4 storied building is permitted to be constructed, then security of Belguma Police Line will be vulnerable and compromised. Extremists may use the building as a safe place from where they can easily target the police which may hamper the security of human as well as property. Belguma Police Line has paramount importance in the area and considering grave security reasons, the construction ought not to be permitted beyond the B+G+1 storey level.

There is no other high-rise building in close proximity of Belguma Police Lines and the subject construction will be the only high-rise in front of the Police Lines. If one high-rise is permitted to be constructed, the same will encourage similar constructions around the Police Lines. The police personnel never step down to sacrifice their lives for the country and to save the life of the public in any situation and if their safety and security is compromised then precious lives of the common people may be endangered. For upholding the safety and security of the force and in the interest of the common people at large, the high-rise ought not to be permitted beyond the B+G+1 storey level.

It has been submitted that the order impugned is an appealable one and if the petitioners are aggrieved by the restriction imposed upon them, they are always free to avail the provision of filing appeal and thereafter a

review and the Court sitting in the high prerogative writ jurisdiction ought not to decide the issue.

Prayer has been made for dismissal of the writ petition.

I have heard and considered the submission made on behalf of the petitioners and the State respondents.

It is admitted that the plan proposal which was submitted by the petitioners stood approved by the Zilla Parishad on the basis of which the petitioners initiated construction and have already completed construction up to the B+G+1 storey level. It is at this stage that objection was raised from the end of the police to restrict construction up to the level which has already been constructed. Can such restriction be imposed at this stage when the construction is half done, is the question that is to be answered.

According to the provisions of the West Bengal Panchayats Act, 1973 read with the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 any person intending to erect a new structure or a new 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 to the gram panchayat along with a plan of the proposed structure or building, a site plan, copy of record of rights and copy of such other records showing title and interest in respect of the land along with the prescribed application fees.

On presentation of the aforesaid application for construction, the same is to be examined with regard to the right, title and interest of the

applicant in respect of the land on which the structure is proposed to be erected and after such enquiry as may be considered necessary, shall proceed either to grant or to refuse permission for erection or construction. The applications which are required to be vetted by the Zilla Parishad shall be sent by the gram panchayat to the Zilla Parishad and after vetting the same, it is to be returned.

The authority, if it considers necessary, in view of the changed circumstances, require a modification of the building plan for reasons to be recorded in writing in case of delay in completion of the work.

Permission for construction may be refused on grounds which are to be recorded in writing and communicated to the applicant for taking further action in that regard.

There is a specific provision for restricting construction in the vicinity of the airport or prohibited area and no person is granted permission to make construction in the vicinity of the airport or of a prohibited area, notified as such by the competent authority under law for the time being in force which may pose as a hazard to aviation or security.

Apart from aviation hazard or security issues there are other grounds for withholding or refusing permission. For example, if the plan proposal does not contain the required particulars or has not been prepared in the manner as laid down in the Rules or any information or document required under the Act or Rules has not been duly furnished or the proposed structural building shall or is likely to disturb environmental sanitation of

the locality or the proposed structure or building is an encroachment on the government land, sanction may be refused.

In the instance case the competent authority to sanction the plan for raising construction of a high-rise building is the Zilla Parishad. The petitioners submitted the plan proposal and it has to be taken that the same was sanctioned by the Zilla Parishad only after making the necessary enquiry as required under law. As there is no expressed notification by the competent authority restricting construction in the said area, accordingly, the Zilla Parishad duly vetted the plan and sanctioned the same. Had there been a notification in place issued by the competent authority restricting construction in or around the subject area, the Zilla Parishad would certainly not have granted permission for raising construction. In the absence of a specific notification issued by the competent authority restricting construction, the Zilla Parishad ought not to have restricted construction at the insistence of the police.

Had there been such security issues in raising constructions over and above a particular level, the police ought to have brought the same in the knowledge of the concerned department so that a notification could have been prepared and published restricting construction. Till such notification comes into existence it will be highly improper to restrict an applicant to raise construction despite possessing a valid sanctioned plan.

From the submissions made on behalf of the respondent police authorities it appears that the police is reeling under a threat perception

that Maoist and extremist forces which are very active in the area may use the high-rise as a safe house and may monitor the activities of the police. Is it not the duty of the police to keep a tab on such type of movements so as to curb the insurgent forces under any circumstances? Can it be taken for granted that similar type of apprehension will not be there if the construction is restricted only up to the B+G+1 storey level?

When the earlier Maoist activities took place, no high-rise building existed nearby, but even thereafter, the police failed to save the lives of the persons who were killed or injured in such type of activity. Shouldn't the police brush up their skills to counter the insurgent forces? Is the police trying to cover up their failure or insecurities by trying to restrict construction of high-rise building in the area? Isn't it the duty and responsibility of the police to ensure that the terrorists and the extremists be tamed, controlled, disciplined and brought into the main stream?

Commercial activity in the area is bound to create job opportunities and is likely to help in the overall development of the locality. With such development the terrorist activity in the area is likely to reduce and the local inhabitants will get involved in other positive, fruitful and beneficial activities rather than indulge in illegal acts. The police ought to take steps to set their own house in order first rather than cast aspersions and point fingers towards others and put a spanner and prohibit others to act in accordance with law. The petitioners are not guilty of any illegal act as of now. There is no reason as to why they should be prevented from concluding the construction as per the building sanctioned plan.

The police should develop their own level of security to prevent insurgent activity in the locality. Security of the police personnel is certainly a matter of concern but the same cannot be achieved at the cost of restricting construction of a high-rise building which has been sanctioned in accordance with law for residential and commercial use.

If the police thought of performing their daily duties away from the public eye, then the police ought to have taken preventive measures in proper time to restrict construction in the area. Till such time a notification restricting construction is in place and in the absence of a guiding rule, it will be absolutely improper to restrict construction in accordance with the plan sanctioned.

The petitioners, being the owners of the land, have every right to enjoy the same according to their own wish and desire, of course, subject to the reasonable restrictions imposed by law. As on date, there is no restriction legally prohibiting construction beyond a particular level, despite possessing a valid sanctioned plan. Imposing such restriction will amount to infringement of the fundamental rights enjoyed by the petitioners guaranteed under the various provisions of the Constitution of India including the right to enjoy property and to carry on trade and business according to an individual's choice. Had the restriction been in existence, then the petitioners may not have invested such money in the construction and may not have conceived such a project. The police cannot impose restriction not provided in law.

The submission made by the respondent authorities with regard to maintainability of the instant writ petition in view of the availability of an alternative remedy and non-exhausting of the appellate provision cannot be accepted. The provision for appeal is only available when the permission to raise construction is refused. An order refusing grant of sanction/permission to raise construction is an appealable one but the order restricting construction, after sanction being granted, is not appealable. As there is no scope to restrict construction despite issuance of a sanctioned plan, accordingly, there is no scope to prefer appeal against the impugned order of the Zilla Parishad.

In view of the above, the restriction imposed by the Purulia Zilla Parishad at the insistence of the police, cannot be accepted to be a valid one. The impugned order of the Purulia Zilla Parishad dated 16th January, 2024 is liable to be set aside and is, accordingly, set aside and quashed. The petitioners shall be permitted to continue the construction strictly in accordance with the plan sanctioned.

If in the future any notification by the competent authority is published restricting construction, then other high-rise constructions may not be permitted to come up, but till such time such prohibitive notification is published, the plan sanctioning authority has no other option but to accord sanction after due vetting of the plan proposal.

The writ petition stands disposed of.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)