

09.05.2024
Item No.18
Court No.6.
S. De

F.M.A. 520 of 2024
With
I.A. No.CAN/1/2024
Jagadis Chandra Maiti & Anr.
Vs
The State of West Bengal & Ors.

Mr. Uday Sankar Chattopadhyay,
Mr. Pranay Basak,
Ms. Bidisha Chakraborty,
...for the appellants.

Mr. Pappu Adhikari,
...for the respondent no.11.

A judgment and order dated February 20, 2024, whereby the writ petition of the appellants being WPA 25952 of 2023, was dismissed by a learned Judge of this Court, is assailed in this appeal by the writ petitioners.

The appellants had approached the learned single Judge with the grievance that the private respondent no.11 has raised unauthorized construction. More particularly, it was alleged that on the foundation of only a G+1 storeyed building, the private respondent no.11 has constructed three additional floors.

The learned Judge dismissed the writ petition with the following observations :

*“Learned advocate representing
the private respondent has produced a
sanctioned plan approved by the*

Pradhan of the Gram Panchayat dated 30th October, 2014 valid for a year to show that sanction was granted for construction of G+4 storied structure. The photograph annexed with the writ petition also shows that the construction in question consists of G+4 stories.

Prima facie, it does not appear that any unauthorized construction has been made. The Court is not convinced with the submission of the petitioners that the construction is an unauthorized one.”

Being aggrieved, the writ petitioners have come up by way of this appeal.

Learned advocate for the appellants says that the concerned Gram Panchayat did not have jurisdiction to sanction the building plan in view of the magnitude of the construction in question. The Gram Panchayat does not have jurisdiction in matters of plinth area of 300 square meters or more or height exceeding 6.5 meters. In this case, according to the appellants, the private respondent no.11 has flouted the relevant building Rules.

Learned advocate for the private respondent no.11 says that the construction was made in 2014.

The appellants raised a dispute at that time. They approached the Court after an unexplained delay of about nine years. On that ground alone, the writ petition should have been dismissed.

The writ petition has been dismissed. However, the point of delay was not urged by the parties before the learned Judge. In any event, delay is not an absolute bar to the maintainability of the writ petition. The allegation is of unauthorized construction. A competent person should enquire into the allegation.

Accordingly, we permit the appellants to make a comprehensive representation to the Sub Divisional Officer (in short "SDO"), Tamluk ventilating their grievance as regards alleged unauthorized construction at the instance of the private respondent no.11. A copy of such representation shall be made available to the private respondent no.11 who shall be at liberty to file his response thereto before the SDO. The SDO shall take a reasoned decision in the matter in accordance with law and the applicable rules and regulations after making necessary local enquiry and inspection of the property in question with the assistance of the parties and any other person that he may deem necessary. The final order shall be passed within a period of twelve weeks from the date of communication of this order to the SDO who is the respondent no.4 herein, after granting due opportunity

of hearing to the concerned parties including the appellants and the private respondent no.11 herein. If the respondent no.4 finds merit in the grievance of the appellants, necessary consequential orders shall be issued by him and/or steps shall be taken by him in accordance with law.

The order under appeal is set aside.

FMA 520 of 2024 is disposed of along with the application being I.A. No. CAN 1 of 2024.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)