

16.01.2024
Item No.19
Court No.6.
S. De

M.A.T. 721 of 2023
With
I.A. No. CAN/1/2023
I.A. No. CAN/4/2024

Raju Molla @ Surabuddin Molla.
Vs
The State of West Bengal & Ors.

Mr. Sekhar Pal,
Mr. Mobakshar Islam,
Md. Mozammel Hossain,
...for the appellant.

Mr. Jyoti Prakash Chatterjee,
Ms. Tanuja Basak, ...for the State.

Mr Anindya Bose,
Mr. Santanu Maji,
...for the respondent no.9.

In re : I.A. No. CAN/4/2024

This is an application for condonation of delay of 68 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I.A. No. CAN/4/2024 is, accordingly, disposed of.

In re : MAT 721 of 2023 & I.A. No. CAN/1/2023

By consent of the parties, the appeal and the connected application are taken up together for hearing.

This appeal is directed against a judgment and order dated January 2, 2023 whereby the writ petition of the respondent no.9 herein being WPA No.25631 of 2022 was disposed of by a learned Judge of this Court.

The respondent no.9/writ petitioner had approached the learned Single Judge alleging that the respondent nos. 8 and 9 in the writ petition (respondent no.8 is the appellant herein) have raised unauthorized construction on a plot of land without obtaining conversion from the competent authority.

The learned Judge had asked the respondent nos. 8 and 9 to produce sanction granted by the concerned Gram Panchayat. The said respondents produced a certificate issued by the Prodhan of the Gram Panchayat indicating that the Prodhan did not have any objection if the said respondents constructed a residential house along the pond over an area of four decimal of lands.

The learned Judge referred to Section 23 of the West Bengal Panchayat Act, 1973 as also Rules 26 and 27 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 and observed that no construction can be permitted without obtaining permission from the competent authority namely, the Gram Panchayat in this case and only upon obtaining conversion of the land to 'bastu'. The learned Judge held that mere no objection certificate

from the Prodhan is not the permission of the Gram Panchayat contemplated under the law. There was also no application for sanction in the prescribed form.

The learned Judge disposed of the writ petition by directing the concerned Gram Panchayat to treat the contents of the writ petition as a representation of the writ petitioner and to take a decision in accordance with law. The learned Judge laid down a procedure which the Gram Panchayat was directed to follow, namely, holding of an inspection, preparing of inspection report with sketch map indicating the extent of deviation if any, making such report available to all concerned parties etc. The Panchayat was finally directed to pass a reasoned order in accordance with the provisions of the West Bengal Panchayat Act.

In other words, the learned Judge directed the concerned Gram Panchayat to act as a fact finding authority and take necessary action after holding due enquiry in the presence of all concerned parties.

Being aggrieved, the respondent no.8 has come up by way of this appeal.

Learned advocate appearing for the appellant has tried to impress upon us that the provisions of the West Bengal Panchayat Act do not require obtaining of any permission for any repairing work. All that the appellant was doing was repairing his old house which was constructed about sixty years ago. Hence,

according to learned counsel, the learned Single Judge fell in error in sending the matter to the Gram Panchayat for holding enquiry.

Learned advocate for the appellant says that no new construction is being raised and, therefore, no sanction of the Gram Panchayat is necessary. He also says that after the impugned order was passed by the learned Single Judge, the Prodhan of the concerned Gram Panchayat has conducted enquiry in the matter. This is disputed on behalf of the respondent no.9/writ petitioner.

We are not impressed with the argument advanced on behalf of the appellant. Whether the appellant is undertaking mere repairing work or whether he is making new construction is a factual issue which has to be ascertained by a fact finding authority. The issue is whether or not any new construction is being made without obtaining necessary sanction from the competent authority, is also to be looked into. The question of conversion or lack of it is also to be considered. The writ Court cannot undertake that exercise. Accordingly, the learned Judge rightly directed the Gram Panchayat to enquire into the matter and take appropriate action.

We see no infirmity in the order under appeal. The appellant will be at liberty to participate in the proceedings conducted by the Gram Panchayat. If the

Gram Panchayat comes to a finding that the appellant has raised construction without obtaining requisite permission, appropriate action will be taken by the Gram Panchayat in accordance with law. The entire exercise shall be completed by the Gram Panchayat within four months from date.

Since the Gram Panchayat is not represented today, let a copy of this order be immediately sent by learned advocate-on-record for the writ petitioner to the Prodhan of the concerned Gram Panchayat.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondents.

MAT 721 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

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.)

(Apurba Sinha Ray, J.)