

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***M.A.T. 805 of 2024
(CAN 1 of 2024)***

Golam Kuddus Mollah

-Vs-

***The West Bengal Department of
Panchayats & Rural Development & Ors.***

For the Appellant : Mr. Mahendra Prasad Gupta, Adv.,
Mrs. Pampa Dey (Dhabal), Adv.,
Mr. Biswarup Chatterjee, Adv.,
Mr. Aditya Sinha, Adv.
Mr. Sarthak Singha, Adv.

For the State : Mr. Lalit Mohan Mahata, Adv,
Mr. Rudranil De, Adv.

For the Zilla Parishad : Mr. Sandipan Banerjee, Adv.,
Mr. Arijeet Bhattacharjee, Adv.

Heard on : 02.09.2024 & 09.09.2024

Judgment on : 09.09.2024

Joymalya Bagchi, J. :-

1. Appellant/writ petitioner had approached this Court, inter alia, alleging that an unauthorized construction was made over plot No.1409 pertaining to *Sabek Khatian No.102* of *Mouza Kendra*

Dangal and prayed for demolition of the said construction. It is pleaded in the writ petition appellant and his two brothers are owners of 0.8 *satak* land in the said plot. It is argued the State had passed orders of vesting under the West Bengal Land Reforms Act as amended by the Amending Acts of 1981 and 1986. The said provisions in the amending acts had been declared *ultra vires* by this Court and matter is pending consideration before the Hon'ble Supreme Court. Orders have been passed by the Hon'ble Apex Court restraining the State from creating any third party interest on the land.

2. In this backdrop, it is contended the construction on the land amounts to illegal encroachment and no sanction plan had been obtained as per Section 23 of the West Bengal Panchayat Act.
3. The respondent-Zilla Parishad contested the proceeding and contended that the construction in question was a part of a project under National Health Mission (for short NHM) wherein seven (7) *Su Swasthya Kendra* (Health and Wellness Centre) were proposed to be set up in the district of Birbhum. The construction being undertaken at the behest of the State of West Bengal, no sanction from the Panchayat was necessary.
4. Having considered the materials on record the Hon'ble Judge was of the view issue pertaining to encroachment on the land may be

agitated before the appropriate forum and dismissed the writ petition.

5. Mr. Gupta for appellant submits the Hon'ble Judge failed to consider that respondent authorities including the State had no right to erect the Health Centre on his land. He also submits plan was not sanctioned by the Panchayat and, therefore, the construction is unauthorized.
6. In reply, Mr. Mahatao for State submits this Court had not struck down the 1981 and 1986 amendments to the West Bengal Land Reforms Act at hand as a whole. Some provisions had been struck down which are not germane to the case as the State was in possession of the vested land. Challenging the vesting, appellant had approached the Land Tribunal but no order of injunction had been passed in his favour. With regard to the construction, he contends that *Su Swasthya Kendra* (Health and Wellness Centre) was set up under the NHM project at the behest of the Government.
7. Mr. Banerjee for Zilla Parishad has placed records pertaining to the setting up of *Su Swasthya Kendra* in question. The records have been inspected by the parties as well as the Court. From the records, it appears the construction was made after the State granted administrative and financial sanction under the NHM RoP 2023-24. At the time of grant of administrative and financial sanction, the State approved the proposed building plan prepared

and certified by the Engineers of NHM, Family and Health Welfare Department, Government of West Bengal.

8. We have considered the aforesaid materials on record in light of the submissions made on behalf of the parties. With regard to creation of third party interest of the land, we note appellant had challenged the order of vesting before the Land Tribunal but no order of injunction had been passed in his favour.
9. Under such circumstances, public project undertaken by the State to build a Health and Wellness Centre on the said land cannot be construed as creation of third party interest therein.
10. With regard to the validity of the construction, we note the project was sanctioned by the Government of West Bengal under the NHM. The building plan was prepared and certified by the Engineers of the NHM, Government of West Bengal. Zilla Parishad concerned was approved by the State when the administrative and financial sanction was granted. These materials clearly belie the case of the appellant that Zilla Parishad had made the construction on its own without following the requirements under Section 23 of the West Bengal Panchayat Act.
11. It may not be out of place to note the 4th proviso to Section 23 (2) of the West Bengal Panchayat Act, inter alia, vests power in the State Government to exempt any structure or building or class or structure of the building from operation of sub section (1) of the

said Section which requires sanction by the Panchayat concerned for erection of a building. In the present case, Health and Wellness Centre was set up under the NHM project with financial and administrative sanction of State Government. At the time of grant of financial and administrative sanction, the State Government approved the plan prepared and certified by the Engineers of Health and Family Welfare Department. The sanction of the State Government did not specify it was subject to further sanction from the Panchayat for construction of the building.

12. In such view of the matter, it cannot be said the construction is an unauthorized one.
13. Accordingly, we find no merit in the appeal and the same is dismissed. The records of the Zilla Parishad are returned.
14. Consequently, connected application is also dismissed.
15. There shall be no order as to costs.
16. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

as