

22.01.2024
Item No.10
Court No.6.
S. De

**M.A.T. 1080 of 2023
With
I.A. No. CAN/1/2023**

**Syeda Shayam Bibi @ SyedaShayama Bibi @ Ranta
& Anr.
Vs
The State of West Bengal & Ors.**

Mr. Debasish Ghosh,
Ms. Munmun Ganguly,
Ms. Antara Biswas, ...for the appellants.

Ms. Sweta Mukherjee,
Mr. Soujanga Bandyopadhyay,
...for the respondent no.8.

Affidavit-of-service filed in Court today be kept
with the records.

In spite of service, nobody appears for the State
respondents.

A judgment and order dated May 16, 2023,
whereby the writ petition of the respondent no.8
herein was disposed of by a learned Judge of this
Court, is the subject matter of challenge in this appeal
at the instance of the respondent nos. 8 and 9 in the
writ petition.

It appears that in an earlier round of litigation,
the present writ petitioner had approached the writ
Court alleging that the present appellants were
constructing a two-storied building without obtaining

sanctioned plan therefor. The other allegation was of encroachment on the writ petitioner's land by the present appellants and also that the construction was being raised without obtaining conversion of the land in question from 'sali' to 'bastu'. That writ petition was disposed of by an order dated January 4, 2023, with a direction upon the concerned Gram Panchayat to dispose of the writ petitioner's representation regarding alleged unauthorized construction at the instance of the present appellants. A procedure was laid down by the Court which was to be followed by the Gram Panchayat for arriving at a decision. Upon completion of the process, the Gram Panchayat was directed to proceed in accordance with the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

Pursuant to such direction, an inspection was held on March 11, 2023. It was found that there was no sanctioned plan in respect of the impugned construction. It was also recorded that no plan for sanction was found in the office of the Panchayat.

It appears that a *post facto* sanction was granted by the Panchayat on March 27, 2023. The final report which was prepared by the Panchayat authorities upon hearing the parties records so. The Prodhan observed in the final report that the construction in

question should neither be demolished nor destroyed as a plan had been subsequently sanctioned.

Challenging such final report, the respondent no.8 herein approached the learned Single Judge in the present round of litigation.

The learned Judge set aside the report to the extent it mentioned that the construction was sanctioned on March 27, 2023, and as such the building was not unauthorized and should not be demolished or destroyed. The learned Judge disposed of the writ petition with inter alia, the following observations.

“Thus, even though the issue of conversion is covered under a specified act, that is, the West Bengal Land Reforms Act, 1995, this Court can take cognizance of the fact of non-conversion and hold that the panchayat authorities had acted contrary to the rules by granting post facto sanction in respect of a construction which was completed sometime in 2022 on a land which was recorded as ‘sali’ and no conversion to ‘bastu’ had been permitted.

The order impugned dated April 28, 2023 is set aside to the extent of the observation that the construction being sanctioned on March 27, 2023 did not make the building

unauthorized and the building should not be either demolished or destroyed.

The report along with the report of physical inspection shall be forwarded to the Sub-Divisional Officer, Dismond Harbour, for necessary action in terms of Section 23(5) of the West Bengal Panchayat Act, 1973, within a week from the date of communication of this order. Steps for demolition shall be taken upon affording one last opportunity of hearing to the respondent nos. 8 and 9 as also the petitioner. The entire exercise shall be completed within a period of one month from the date of receipt of the report from the gram panchayat.”

Being aggrieved, the respondent nos. 8 and 9 in the writ petition have come up by way of this appeal.

Learned advocate for the appellants strenuously argued that it is true that the building was constructed without obtaining permission from the concerned Panchayat. However, when it was pointed out that certain portions of the building are beyond the applicable building rules, those portions were demolished by the appellants. The structure that presently remains conform to the applicable rules. That is why *post facto* approval was granted by the

concerned Gram Panchayat. The learned Single Judge ought not to have interfered with such course of action.

Learned counsel further submitted that today even if the structure is brought down, the appellants would still have the liberty to obtain a prior sanction and re-build the structure. Hence, to save scarce resources, the appellants should be permitted to retain the structure upon payment of such penalty as the authorities may decide.

We have not called upon the respondent/writ petitioner to make submission.

The learned Judge referred to four decisions, three of the Hon'ble Supreme Court and one of a Division Bench of this Court. The Hon'ble Apex Court in no uncertain terms has laid down in those three cases that there should be zero tolerance for unauthorized construction, i.e., constructions which have been made without a sanctioned building plan or construction made in deviation from a sanctioned building plan. In the Division Bench judgment, a Co-ordinate Bench has laid down that under the West Bengal Panchayat Act, 1973, there is no scope for a Gram Panchayat to accord *post facto* approval. Construction of any building beyond a certain dimension must be preceded by the builder obtaining prior sanction from the competent authority.

In view of the aforesaid, we cannot find any fault with the decision of the learned Single Judge. We, therefore, do not interfere with the order under appeal.

Section 23 Sub-section 6 of the West Bengal Panchayat Act, 1973 reads as follows :

“Where any new structure or new building or any addition to any structure or building is being or has been erected or made as the case may be, in contravention of the provisions of sub-section (1), the authority may, after giving the owner of such building an opportunity of being heard, make an order directing the demolition of the building by the owner within such period as may be specified in the order and in default the authority may itself effect the demolition and recover the cost thereof from the owner as a public demand.”

We accordingly, grant one month's time to the appellants to demolish the impugned structure under the supervision of the concerned Gram Panchayat. Once such demolition is complete, the Gram Panchayat shall consider in accordance with law, the application that the appellants say, they have made for grant of sanction and decide such application within a month after the demolition is complete. We are sure that if the building plan which has been submitted for

sanction is in accordance with the applicable rules, the Panchayat shall sanction the same. However, before finally deciding the question of sanction, an opportunity of hearing should be granted to the concerned parties including the appellants herein and the respondent/writ petitioner.

In default of the appellants demolishing the impugned structure within a month from date (February 22, 2024), the competent authority contemplated under the West Bengal Panchayat Act, shall forthwith demolish the same and recover the cost from the appellants in the manner mentioned in the 1973 Act.

The order under appeal is modified to the aforesaid extent only.

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

MAT 1080 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.)

(M.V. Muralidaran, J.)