

**-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

***F. M. A. 999 of 2024
(CAN 1 of 2024)***

***Sitaram Barasia
-Vs-
The State of West Bengal & Ors.***

For the Appellant : Mr. Tapash Kumar Bhattacharya, Adv.
Mr. Aviroop Bhattacharya, Adv.

For Respondent no.5 : Mr. Pratik Majumder, Adv.
[Pradhan] Mr. Abdul Mullick, Adv.

For Respondent No.9 : Mr. Parashar Baidya, Adv.
Mr. Santanu Talukdar, Adv.
Mr. Priyankar Ganguly, Adv.
Ms. Shalini Bairagi, Adv.

Heard on : 23.09.2024

Judgment on : 23.09.2024

Joymalya Bagchi, J. :-

1. Appellant had approached this court alleging unauthorised construction by private respondent no.9.

2. In view of such complaint, Hon'ble Single Judge in WPA 12404 of 2022 disposed of the matter directing the Pradhan, Karimpur-I Gram Panchayat to consider the grievance of the appellant in the following manner :-

- a) *An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no.12 within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondent no.12.*
- b) *In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and was continuing, the authorities may take such interim measures by stopping such construction.*
- c) *The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorised construction, if any.*
- d) *Such report shall be handed over to the parties.*
- e) *A hearing shall be given to the petitioner and the respondent no.12. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority. All points raised by either party shall be decided.*
- f) *A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of the statute.*

3. Pursuant thereto, the Pradhan, Karimpur-I Gram Panchayat passed order dated 13.02.2023 wherein he noted as follows :-

- i) *As per deed the area of the premises is 807 sq. ft. but B.L.&L.R.O. has found the area of the building to be 870 sq. ft.*
- ii) *Panchayat had sanctioned a structure of 574 sq. ft.*

- iii) *The building was constructed without maintaining mandatory side open spaces.*
- iv) *No permission from Panchayat or Zilla Parishad was obtained to make the G+2 storied construction.*

4. In light of the aforesaid findings, Pradhan directed the private respondent no.9 to demolish the unauthorised portions of the building.

5. Appellant again approached this court in the instant writ petition seeking implementation of the order of the Pradhan. During hearing, Hon'ble Single Judge noted the order was passed without complying with the directions of this court in WPA 12404 of 2022 and remitted the matter to the Pradhan to undertake enquiry in terms of the aforesaid order in WPA 12404 of 2022 and pass a reasoned order with regard to complaint regarding unauthorised construction. Hon'ble Single Judge further directed if any unauthorised construction was noted, the same shall be referred to the Sub-Divisional Officer in terms of Section 23(5) of the West Bengal Panchayat Act, 1973.

6. Mr. Tapas Kumar Bhattacharya for the appellant contends the order passed by the Pradhan is self-evident with regard to deviations from the sanctioned plan. He also contends the said order had not been assailed.

7. Learned Advocate for the Pradhan, Karimpur-I Gram Panchayat, however, is unable to place on record report of inspection including sketch map showing the extent and nature of unauthorised construction.

8. Learned Advocate for private respondent no.9 submits no copy of the inspection report had been served upon him during hearing.

9. We have considered the materials on record. By order dated 05.09.2022 in WPA 12404 of 2022 Hon'ble Single Judge directed the Pradhan, Karimpur-I Gram Panchayat to hold inspection and thereupon prepare an inspection report enclosing sketch map indicating the nature and extent of unauthorised construction. Report was directed to be handed over to the parties and after hearing them vis-a-vis objections to the report, necessary order was required to be passed.

10. Order passed by the Pradhan does not reflect inspection report with sketch map was prepared and circulated amongst the parties including private respondent no.9. Consequently private respondent no.9 was in the dark with regard to the contents of the inspection report and could not effectively make representation when the order directing demolition of unauthorised construction came to be passed.

11. Under such circumstances, we are of the view order of the Pradhan, Karimpur-I Gram Panchayat was not only in breach of the directions of this court in WPA 12404 of 2022 but also in breach of principles of natural justice and fair procedure.

12. Accordingly, we are of the view Hon'ble Single Judge was justified to direct fresh inquiry in terms of the order passed by this court in WPA 12404 of 2022 within a time frame. Hon'ble Judge had further directed in the event unauthorised construction was noted, matter shall be referred

to the Sub-Divisional Officer under Section 23(5) of the West Bengal Panchayat Act, 1973 which addresses the concern of the appellant. The impugned order does not call for interference.

13. We direct the Pradhan, Karimpur-I Gram Panchayat to conclude enquiry in terms of the impugned order within six weeks from the date of communication of this order. In the event, unauthorised construction is noted, the said order shall be forwarded to the Sub-Divisional Officer under Section 23(5) of the West Bengal Panchayat Act, 1973 within one week thereof for necessary action in accordance with law.

14. With the aforesaid directions, appeal is disposed of.

15. In view of disposal of the appeal, connected application being CAN 1 of 2024 is also disposed of.

16. There shall be no order as to costs.

17. 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.)

akd

