

S/L 13
16.01.2024
Court No.24
SD

WPA 17106 of 2023
With
CAN 2 of 2024

Gopal Maiti & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Debashis Banerjee
Mr. Supreem Naskar
Mr. Rakesh Jana

...for the Petitioners.

Mr. L.M. Mahata
Mr. Rudranil De

...for the State.

Mr. Uttam Kr. Bhattacharya

...for the Respondent Nos.2-5.

Mr. Kanailal Samanta
Mr. B. K. Samanta

...for the Respondent No.7.

The writ petition relates to a construction made within the jurisdiction of the Purba Medinipur Zilla Parishad. The competent authority of the Zilla Parishad is yet to come to a specific finding as to whether the construction is authorized or not.

The Hearing Officer of the Zilla Parishad issued a notice for spot inspection of the premises. At this stage, the petitioner filed the instant writ petition alleging that the Hearing Officer, who issued the notice for spot inspection, is not the competent authority to decide the issue.

Reliance has been placed on Section 160A(6) of the West Bengal Panchayat Act, 1973. Reliance has also been placed on the order dated February 24, 2023 issued by the

Secretary, Government of West Bengal, Panchayat and Rural Development Department.

The officials of the Purba Medinipur Zilla Parishad inspected the property and have noted down the physical measurement of the same. The measurements were duly communicated to the parties. The Hearing Officer, after noting down the measurements, directed for a spot inspection.

The learned advocate representing the private respondents submits that the construction in question is unauthorized and illegal. It has been submitted that relying on technical grounds, the unauthorized construction is being held by the petitioners.

Learned advocate representing the State respondents submits that the Hearing Officer who issued the notice of spot inspection is the competent authority to decide the issue.

The order dated February 24, 2023 takes note of Section 160A(6) of the Act which provides that if any new structure or building or any addition to any structure or building is erected or made in rural areas (for which Zilla Parishad is the permission granting authority) in contravention of the provisions of Sub-section (1) of Section 160A of the Act, the matter shall be heard by a Hearing Officer, who shall preferably be a retired senior Government Officer with experience of having working as Magistrate and

shall be appointed in the Zilla Parishad by the State Government.

The Hearing Officer who has issued the notice of spot inspection has the experience of working as a Magistrate for more than 13 years. He is, however, not a retired senior Government Officer.

The petitioners object to the Hearing Officer who issued the notice only on the ground that he is not a retired senior Government Officer.

The Section clearly lays down that the Hearing Officer shall preferably be a retired senior Government Officer. The law does not mandate that it is only a retired senior Government Officer who has to be appointed as Hearing Officer. Any Officer, who has the working experience as a Magistrate, shall be appointed as Hearing Officer, is the mandate of law.

In the instant case, the concerned Hearing Officer has enough experience of working as Magistrate. Not being a retired senior Government Officer is not a disqualification for him to act as the Hearing Officer. According to the Act, he may be treated as the competent person to act as the Hearing Officer.

The specific stand of the State Government is that there is no retired senior Government Officer having experience of working as a Magistrate in the jurisdiction of the Zilla Parishad and, accordingly, the concerned Hearing Officer being the only officer to have the experience of

working as a Magistrate has been directed to act as the Hearing Officer to decide the issue of unauthorized construction.

The Court does not find any infirmity in appointing the concerned Hearing Officer to act in accordance with Section 160A.

The petitioners further contend that the Secretary of the Zilla Parishad cannot act as a Hearing Officer. The submission of the petitioners cannot be accepted in view of the reason that if the Secretary of the Zilla Parishad fulfils the criteria laid down in Section 160A(6), then the Secretary of the Zilla Parishad can always act as the Hearing Officer. There is no bar in the Act restricting the Secretary of the Zilla Parishad to act as Hearing Officer despite having the requisite eligibility criteria to act as such.

The Hearing Officer is directed to fix a date for spot inspection with a prior notice of seven days and intimate the same to the necessary parties. The Hearing Officer shall thereafter make a recommendation and forward the same to the Executive Officer in accordance with the provisions of the Act.

The Hearing Officer shall conduct the spot inspection and forward his recommendation to the Executive Officer at the earliest but preferably within a period of eight weeks from the date of communication of this order.

The writ petition along with the connected application stands disposed of.

Urgent certified photocopy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Amrita Sinha, J.)