

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 17860 of 2023
CAN 1 of 2024

Sri Asish Chowdhury
Vs.
The State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Dilip Kumar Samanta, Adv. Mr. Debopriya Samanta, Adv.
For the State	:-	Mr. Rajarshi Basu, Adv. Mr. Anirban Dutta, Adv.
For the respondent nos. 5-6	:-	Mr. Dilip Sinha, Adv.
For the respondent no. 8	:-	Mr. Soumak Bera, Adv.
Hearing concluded on	:-	19.04.2024
Judgment on	:-	30.04.2024

Amrita Sinha, J.:-

The order dated 11th April, 2023 passed by the Sub-Divisional Officer, Ghatal Sub-Division, Paschim Medinipur is impugned in the present writ petition. By the aforesaid order the petitioner has been directed to remove the illegal construction of 215.46 sq. ft. in the ground floor and the complete structure of 1130.805 sq. ft. in first floor of the building constructed by the petitioner over plot no. 1029, JL no. – 222, Khatian 229, under Kheput Gram Panchayat, P.S Daspur within 2nd May, 2023 failing which the Panchayat will take necessary action to remove the illegal construction and recover the entire cost of demolition from the petitioner.

Primary contention of the petitioner is that the extent of construction made by him is such that there was no requirement of obtaining sanction prior to making construction. The construction has been made within the permissible limits which does not require any sanction. For abundant caution, the petitioner applied for obtaining sanction and the Pradhan of the Gram Panchayat permitted the petitioner to construct two storied pucca construction over the subject plot of land.

The petitioner relies upon the sanction issued by the Gram Panchayat and submits that the construction has been raised in accordance with the plan sanctioned.

Reliance has been placed on Section 23(1) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as 'the Act' for short). It has been contended that as the area of construction is less than 150 sq. mtr. and height of the building is less than 6.5 mtr., accordingly, there is no requirement of obtaining sanction. The construction made by the petitioner is only 725 sq. ft. in the plinth level which is within the permissible limit prescribed under Section 23(1) of the Act.

Prayer has been made for setting aside the impugned order passed by the Sub-Divisional Officer.

Learned advocate representing the State respondents has filed an affidavit by the Sub-Divisional Officer wherein it has been mentioned that the petitioner was afforded reasonable opportunity of hearing for being heard. There has been no violation of the principle of natural justice.

According to the provision of Section 23(1) of the Act, the petitioner ought to have obtained sanction prior to raising the two storied structure. By filing application for obtaining sanction for construction of one storey building, the petitioner could not have raised an additional floor without sanction. The Panchayat could not have sanctioned two floors on an application sought for constructing only one floor.

Learned advocate representing the Gram Panchayat has submitted that any construction made up to 150 sq. mtr. in the plinth level and up to 6.5 mtr. in height requires a sanction from the Gram Panchayat. The petitioner has raised construction beyond the sanction in the ground floor. The construction on the first floor is absolutely without any sanction.

It has also been submitted that the Pradhan already communicated to the Sub-Divisional Officer that the word 'two' was inadvertently written in the sanction letter in place and instead of the word 'one'. As application was made seeking sanction of one storey, there can't be any scope to sanction a further storey. The petitioner ought not to take advantage of the human error of recording the number of floors in the sanction letter.

The respondents pray for dismissal of the writ petition.

I have heard and considered the submissions made on behalf of all the parties.

From the documents annexed to the writ petition it is evident that the petitioner applied for raising construction of a single storied building. The plan proposal submitted by the petitioner was accompanied by a sketch of a

single storied residential building. The proposed ground floor plan, the layout plan, the front elevation all are in respect of a single storied structure. The estimated cost for construction was calculated for construction of a single storied residential building.

The petitioner has not annexed any document to show that plan proposal was submitted for construction of a two storied building. The Panchayat could not have sanctioned two floors on an application made by the petitioner for construction of a single storied building. There is no provision for suo motu sanction. Sanction can be made on a plan proposal applied for by a party intending to make construction. Without a proper sketch and plan, permission/ sanction could not have been granted for raising construction.

To err is human. The Panchayat has disclosed that there was an error in the letter of sanction. Instead of one storey, it had been erroneously mentioned as two storeys. The explanation given by the Panchayat appears to be a probable one. There is no reason as to why the submission of the Panchayat will not be accepted. The petitioner all along knew that he never applied for obtaining sanction of a two storied building, therefore, he cannot take advantage of a mistake committed by the Panchayat.

The other limb of the submission of the petitioner is that sanction was not required to be obtained for raising construction below 150 mtr. in the plinth level. As the construction made by the petitioner in the plinth level is less than 150 sq. mtr. accordingly, there was no requirement for obtaining

any prior permission for raising construction. Section 23(1) of the Act has been relied upon.

For the sake of convenience, the relevant portion of Section 23(1) of the Act is set out herein below.

Section 23 (1) – No person shall erect any new structure or new building or make any addition to any structure or building having plinth area of not more than 150 mtr. in any area within the jurisdiction of a Gram Panchayat except with the previous permission in writing from the Gram Panchayat.

Section 23 (2) second proviso reads as: - Provided further that there shall be no restriction of covered area on construction of kuchcha and semi pucca residential building which shall mean a single storied building not having concrete roof and brick wall with setback of not less than nine-tenth mtr. on the road side.

Section 23(1) of the Act opens with a non-obstante clause. By paraphrasing the said Section, it will read as - no person shall erect any new structure or new building except with the previous permission in writing from the Gram Panchayat. Simplified further it would read as – no person shall erect except without permission, i.e., construction can be made only with permission. In the present context ‘except without’ will mean ‘with’.

The same means that for raising any construction of plinth area less than 150 sq. mtr., sanction will be required from the Gram Panchayat. The

same also implies that without the sanction of the Gram Panchayat, construction of pucca structure cannot be made.

In the case at hand, the petitioner rightly applied for obtaining sanction for raising construction, but thereafter constructed beyond the sanction in the ground floor and further constructed an additional floor without any sanction.

Prior to making additional construction, revised sanction or further permission ought to have been taken from the Panchayat. The petitioner, relying upon a sketch for construction of one storied building, raised additional floor and also constructed additional area in the ground floor without revision of the sanctioned plan. The same is impermissible and contrary to the Statute.

The interpretation of Section 23(1) made by the petitioner is erroneous. If the contention of the petitioner that- there is no requirement of obtaining sanction for raising construction below 150 sq. mtr.- is to be accepted, then the same would be contrary to the relaxation provided under Section 23(2) third proviso which reads as follows:

Section 23(2) third proviso - Provided also that no permission under sub-Section (1) shall be necessary subject to submission of a self-declaration for erection of any new thatched structure, tin shed or tile shed without brick wall covering an area not exceeding 18 sq. mtr. where such structure or shed does not cover more than three-fourth of the total area of the land

(including appurtenant land) and there is a setback of not less than nine-tenth mtr. on the road side.

Relaxation from obtaining sanction is restricted only if the structure is a thatched one, tin shed or tile shed without brick wall up to a particular limit. Apart from the above, it can be safely concluded that construction of a pucca structure with or without concrete roof and brick wall up to 150 mtr. in the plinth level mandatorily requires a sanction to be obtained from the Gram Panchayat prior to raising construction.

There is a specific reason for granting/obtaining sanction prior to raising construction. The sanctioning authority is liable to take into consideration the plan proposal keeping in mind the essential amenities like water and electricity connections/lines, drainage, sewerage etc. In the absence of sanction, unplanned development will be made which may result in overload or add extra pressure to the amenities and public conveniences provided to the people at large. Constructions raised without sanction are to be treated as unauthorised and the same not only violates the municipal laws but also infringes the constitutional and fundamental rights of other persons.

Submission of the petitioner that no permission is required for making construction below 150 mtr. is misinterpretation and misconception of the concerned legal provision relating to construction within the area of the Gram Panchayat.

The Court does not find any error with the order impugned and, accordingly, refrains from interfering with the same.

Hence, the writ petition fails and is hereby dismissed. No order is required to be passed in the connected application.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)