

Form No. J (2)

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**MAT 1667 of 2024
IA NO: CAN/1/2024
CAN/2/2024**

Samir Kumar Samanta

vs.

The State of West Bengal & Ors.

For the Appellant : Mr. Sayan Chattopadhyay, Advocate
Mr. Manas Ajai Sonkar, Advocate

For the State : Mr. Sadhan Kr. Haldar, Advocate
Mr. Bishnupada Jana, Advocate

For the Writ Petitioner
Respondent : Mr. Debabrata Saha Roy, Senior Advocate
Mr. Neil Basu, Advocate
Mr. Rahul Kumar Singh, Advocate
Mr. Sankha Biswas, Advocate

Heard on : 16.12.2024

Judgment on : 16.12.2024

DEBANGSU BASAK, J.:-

1. CAN/2/2024 is an application for seeking condonation of delay in making and filing the appeal.

2. For the ends of justice, causes shown in the application for condonation are accepted as sufficient.

3. Delay in making and filing the appeal is condoned.
4. CAN/2/2024 is disposed of.
5. Since all papers pertaining to the appeal are before us, we deem it appropriate to take the appeal for final hearing.
6. Appeal is directed against the order dated August 1, 2024 passed in WPA 26569 of 2023 and WPA 18243 of 2024.
7. Appeal is at the behest of the writ petitioner in WPA 18243 of 2024.
8. Appellant sought implementation of an order dated August 31, 2023 passed by the Sub-Divisional Magistrate, Purba Bardhaman by which such officer directed the Lions Club of Jamalpur Welfare Trust and Lions Seva Eye Hospital to demolish an alleged unauthorized construction by December 31, 2023.
9. Private respondent herein filed a writ petition being WPA 26569 of 2023 challenging the order dated August 31, 2023, passed by the Sub-Divisional Magistrate, Purba Bardhaman.
10. Learned advocate appearing for the appellant submits that, the private respondent did not apply for G+4 sanction, although, admittedly, G+4 storied building was erected on the plot concerned. He submits that, there is no sanction granted by the Gram Panchayat in respect of any construction at all. He draws the attention of the Court to the application for grant sanction made by the private respondent as also the documents

following subsequent thereto. He submits that, the private respondent paid fees for a construction up to the first floor lawfully. Construction thereafter are wholly unauthorized. He submits that, since the construction being unauthorized, it should be directed to be demolished as done by order dated August 31, 2023 passed by the Sub-Divisional Magistrate, Purba Bardhaman.

11. It is submitted on behalf of the private respondent that, an application for grant of sanction for construction of G+4 building was made to the relevant Gram Panchayat. Reference to Rule 27 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 is made. It is submitted that under Rule 27(1A) thereof, Gram Panchayat is statutorily obliged to forward an application for grant of sanction for G+4 building to the concerned Zilla Parishad. In the present case, Gram Panchayat did not forward the same. It is submitted that, learned Single Judge merely directed forwarding of such relevant papers to the concerned Zilla Parishad for consideration. Therefore, no interference is called for with the order impugned.

12. Learned advocate appearing for the State submits that, the findings returned by the Sub-Divisional Magistrate in its order dated August 31, 2023 be upheld.

13. Admittedly, the private respondent applied for grant of sanction for a construction by a writing addressed to the Gram Panchayat which

was received on June 21, 2011. Fees were also paid. There are disputes as to whether, appropriate and requisite fees for grant of sanction was paid or not.

14. Apparently, the application for grant of sanction was accompanied with proposed building plan for a four storied building.

15. Appellant applied to the relevant authorities that the construction made by the private respondent was unauthorized. A litigation followed. High Court directed the Sub-Divisional Magistrate to consider such issue. Sub-Divisional Magistrate by the order dated August 31, 2023 considered the relevant issues and was of the view that, permission for the building was given for only second floor and any structure beyond second floor is unauthorized. So he directed demolition of the construction beyond the second floor.

16. Rule 27(1A) of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 is as follows:-

“27(1A) A *Gram Panchayat* shall not accord permission to the construction of a new structure or building or to make addition or alteration to an existing structure or building having a plinth area of more than 150 square meters with brick or concrete footing or a height of more than 6.5 meter without vetting of the building plan and the site plan by the *Panchayat Samiti* or the *Zilla Parishad* having jurisdiction:

Provided that an application for construction of a new structure or building or making an addition or alteration of the existing structure or building having a plinth area of more than 150 square meters but less than 300 square meters with brick or concrete footing or a height not more than 6.5 meter shall be sent with all documents to the *Panchayat Samiti* and for construction beyond that plinth area or height or both, the application shall be sent to the *Zilla Parishad* by the *Gram Panchayat* for vetting:

Provided further that the applications, which are required to be vetted by the *Panchayat Samiti* or *Zilla Parishad*, shall be sent by the *Gram Panchayat* within a period of thirty days from the date of such receipt to the *Panchayat Samiti* or *Zilla Parishad* as the case may be and shall be returned by the appropriate body with its vetting or objections as the case may be, to the *Gram Panchayat* within a period of thirty days from the date of its receipt for further action under sub-rule (2).

Explanation.- For the purpose of this rule a structure or building includes a tower, godown and underground floor or storage.”

17. Such sub-rule requires the Gram Panchayat to forward a plan for grant of sanction to the Zilla Parishad where, the applicant seeks sanction of G+4 storied building.

18. In the facts and circumstances of the present case, admittedly, Gram Panchayat did not forward the application for grant of sanction to the Zilla Parishad.

19. Noticing such fact, learned Single Judge directed such an exercise to be concluded. In undertaking such exercise as directed by the learned Single Judge, the authorities will also consider the adequacy of the fees paid.

20. In such circumstances, we find no ground to interfere with the impugned order.

21. MAT 1667 of 2024 along with connected applications are disposed of.

(Debangsu Basak, J.)

22. I agree.

(Md. Shabbar Rashidi, J.)