

W.P.A. 24538 of 2023

Sk.Nizamuddin
Vs.
The Principal Secretary,
Department of Panchayat &
Rural Development & Ors.

Mr. Bhagabat Chowdhury
Ms. Barnali Gupta ... for the petitioner

Mr. Indranil Roy
Mr. Tapas Ballav Mondal ... for the State

Mr. Debabrata Saharoy
Mr. Debabrata Chakraborty
Ms. Somshree Saha
... for private respondent

Ms. Mekhla Sinha
Ms. Malabika Roy Dey... for Howrah Zilla Parishad

The order passed by the District Engineer, Howrah Zilla Parishad dated 5th June, 2023 is impugned in the instant writ petition. The petitioner alleges illegal and unauthorized construction at the behest of the private respondent.

Specific allegation is that the mandatory side and open spaces have not been maintained by the private respondent at the time of raising construction.

From the order impugned it appears that the report of the Assistant Engineer was taken into consideration. A spot inspection was conducted in the presence of all the parties. The report of the Assistant Engineer mentions that there are cantilever projections on all four sides. The private respondent applied for regularization of the construction made and the prayer for regularization has been allowed by the Zilla Parishad.

The petitioner submits that the report of spot inspection as directed to be circulated by the order of the Court dated

21.11.2022 passed in W.P.A. 21934 of 2022 has not been circulated till date.

The petitioner argues that the regularization has been made by holding the same to be minor deviation but the order does not specify the total area where sanction has been made and, accordingly, the conclusion that minor deviation took place could not have been arrived at by the said respondent.

Learned advocate representing the private respondent submits that there is a fresh cause of action and the instant writ petition will not be maintainable at this stage. It has been submitted that unauthorized construction, as detected, has already been regularized relying on Rule 15 of the Howrah Zilla Parishad Bye-Rules, 2005 as amended in 2019 and the Building Committee of Howrah Zilla Parishad accepted the prayer of the private respondent prior to the petitioner approaching the Court for relief. As the order of regularization is not under challenge, accordingly, the challenge to the order of the District Engineer, Howrah Zilla Parishad would not help the petitioner in seeking the relief as sought for. As the unauthorized construction has already been regularized, as such, there is no scope for challenging the same at this stage.

Learned advocate representing the Howrah Zilla Parishad submits that the Building Committee, relying upon Rule 15 of the bye-laws, have already regularized the unauthorized construction. Proper notice of spot inspection and hearing was given to the parties. At the time of hearing the petitioner did not raise the issue of non supply of the spot inspection report. All points raised by the petitioner were duly considered and final order has been passed on 05.06.2023. There is no apparent error in the said order and, accordingly, the Court ought not to interfere with the same.

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

The Court in the earlier writ petition filed by the writ petitioner directed the District Engineer of the Howrah Zilla Parishad to consider the objection filed by the petitioner after conducting a spot inspection and after circulation of the report of spot inspection along with the sketch map. The petitioner submits that neither the sketch map nor the spot inspection report was circulated.

Learned advocate representing the private respondent has produced before this Court a spot inspection report along with the sketch map.

As the petitioner alleges that the same has not been circulated, accordingly, the District Engineer is directed to circulate the spot inspection report and the sketch map. The unauthorised construction appears to have been regularized by the Building Committee of the Howrah Zilla Parishad.

If upon perusal of the spot inspection report it appears to the petitioner that the regularization was not permissible then it will be open for the petitioner to apply before the appropriate forum for necessary relief.

The writ petition is disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)