

W.P.A. 25622 of 2016

**Machlandapur Simlon Siddeswari Cultural and
Educational Welfare Society & Anr.**

Vs.

The State of West Bengal & Ors.

Mr. Anindya Lahiri
Ms. Pranati Das

.....for the petitioners

Mr. Ayan Chandra Roy
Mr. Soumik Dey

...for the State

Petitioners have approached this Court with this writ petition being second in the timeline challenging the sanctioned plan granted by the Prodhan, Atghoria Simlon Gram Panchayat being respondent no. 5 on 12th October, 2011 on the ground that the cold storage of respondent no. 8 situates on an approach passage or road having width of less than 5 meters which is impermissible in terms of Rule 31 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004.

It has been submitted by Mr. Anindya Lahiri, learned advocate representing the petitioners that previously a writ petition was filed by the present petitioners being WPA 583 of 2012 and same was disposed of by a coordinate Bench on 29th August, 2013. In the writ petition post facto sanction for conversion of the land on which cold storage was built under Section 4C of the West Bengal Land Reforms Act, 1955 and the

permission granted by the respondent no. 5 vide order dated 12th October, 2011 were challenged and the coordinate Bench while disposing of the writ petition granted leave to the petitioners to challenge the order passed by the concerned authority under Section 4C of the said Act of 1955. It has also been submitted that pursuant to the order dated 29th August, 2013 original application was filed before the West Bengal Land Reforms and Tenancy Tribunal being OA No. 2831 of 2014 and the same is still pending.

However, it has been submitted on behalf of the petitioners that pendency of this original application before the Tribunal has no bearing on the issue involved in this present writ petition since petitioners have questioned the permission granted by the respondent no. 5 in favour of the respondent no. 8 on the strength of Rule 31 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004. Why Rule 31 of the said Rules of 2004 is applicable in the present case, relevant facts have been placed before this Court by drawing attention to the memo dated 28th July, 2011 issued by the Assistant Secretary, Higher Education Department, Government of West Bengal which is at page 32 of the writ petition.

Affidavit-of-service pursuant to the previous order dated 6th March, 2024 is filed today and the same is taken on record.

State-respondents are represented by learned advocate. However, in spite of service of notice upon the other respondents those respondents are not represented today.

Having considered the submissions made on behalf of the petitioners it is found that the petitioners previously filed the writ petition being WPA 583 of 2012 and the coordinate Bench while disposing of the same on 29th August, 2013 granted leave to the petitioners to challenge the order passed by the concerned authority under Section 4C of the said Act of 1955 as well as for recall of sanction of the building plan which has been accorded by the respondent no. 5.

Considering the issue involved in this writ petition this Court finds it apt to quote relevant part of the order passed by the coordinate Bench on 29th August, 2013 below:-

“Admittedly by memo dated 3rd October, 2012 post facto sanction was granted by the Collector with regard to conversion. It appears that the panchayat authorities have also granted sanction to the plan. However, the petitioners question the manner in which such order of sanction was granted. Since order has been issued regarding conversion and sanction for raising building has been granted by the Atghoria Simlon Gram Panchayat, no order is passed on the writ petition. The writ petition is disposed of. However, as prayed for the petitioners are at liberty to challenge the order passed under Section 4C of the 1955 Act as well as for recall of sanction of the building plan before the appropriate authority in accordance with law.”

(emphasis supplied)

In this writ petition petitioners have made an attempt to make out a new case in order to challenge the order of the respondent no. 5 dated 12th October, 2011 according sanctioned plan to the respondent no. 8 upon placing reliance on Rule 31 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004. Considering the steps taken by the petitioners first by filing writ petition being WPA 583 of 2012 questioning conversion order as well as according of sanctioned plan by the respondent no. 5 and subsequent filing of original application before the Tribunal in terms of the leave granted by the coordinate Bench by passing order dated 29th August, 2013 it appears that in order to bypass the aforesaid steps taken by the petitioners and to get rid of sanctioned plan accorded vide order dated 12th October, 2011 a new avenue has been explored which ought not to be permitted at this stage when it is found that the petitioners on availing the leave granted by the Court vide order dated 29th August, 2013 has already taken steps by filing original application before the Tribunal and the same is still pending.

Question would have been different had there been no step taken by the petitioners previously to question the sanctioned plan dated 12th October, 2011 and if this writ petition would have been the first step in order to assail the sanctioned plan dated 12th October, 2011. If at this stage the prayer of the petitioners as couched in this

writ petition is allowed that would in effect permit the petitioners to circumvent the legal steps which were taken previously against the sanctioned plan dated 12th October, 2011 which is not countenanced.

Accordingly, the writ petition stands dismissed.

However, this order shall not create any impediment in deciding the original application which is pending before the Tribunal which was instituted by the petitioners and ultimately if petitioners again approach the appropriate authority to assail the sanctioned plan dated 12th October, 2011 as accorded by the respondent no. 5 it will be open to the petitioners to rely upon Rule 31 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)