

**HIGH COURT AT CALCUTTA
IN THE CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION**

Before: The Hon'ble Justice Hiranmay Bhattacharyya

WPA/568/2021

WITH

WPA/1725/2021

RAKESH KUMAR GUPTA

VS

STATE OF WEST BENGAL & ORS.

For the Petitioner:	Mr. Saptansu Basu, Sr. Adv., Mr. Suresh Kumar Mitruka, Mr. Aayush Mitruka, Ms. Manisha Gupta Advocates
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For the State:	Mr. Subir Kumar Saha, AGP, Mr. Momenur Rahman Advocates
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For the Respondent No.8 :	Mr. Probal Mukherjee, Sr. Adv., Mr. Debasish Mukhopadhyay, Mr. Anirban Banerjee Advocates
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Heard on:	10.01.2024
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Judgment on:	10.01.2024
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HIRANMAY BHATTACHARYA, J.:-

1. Since identical questions of law and fact are involved in these writ petitions, the same are taken up for analogous hearing and are decided by this order.
2. The order of the Block Development Officer, Matigara-I Development Block dated 19.06.2020 is under challenge in WPA 568 of 2021.
3. The permission for construction granted by the Prodhan, Matigara-I Gram Panchayat on 26.02.2020 in favour of the private respondent no.8 is under challenge in WPA 1725 of 2021 and the petitioner has prayed for cancellation of such permission.
4. A civil suit filed by the petitioner herein praying for declaration of his right, title and interest in respect of the property in question against the private respondent no.8 herein is pending before the Civil Court. Alleging that the private respondent no.8 has encroached upon the PWD road and was making construction thereupon, the petitioner herein filed a writ petition being WPA 278 of 2020 which was disposed of by an order dated February 24, 2020.
5. Pursuant to the said order, the Block Development Officer passed the order dated 19.6.2020 by observing that the construction is on private (raiayat) land owned by Sri Naresh Chandra Barman and not PWD or any Government land.
6. In the meantime, the Prodhan, Matigara-I Gram Panchayat granted permission for construction in favour of the private respondent no.8 on 26.02.2020 for construction of temporary tin shed structure along with a scientific toilet.

7. Mr. Saptansu Basu, learned senior counsel representing the petitioner submits that the Block Development Officer did not arrive at a specific finding as to whether the private respondent no.8 had made illegal construction on the land in question though such authority, by an order dated February 24, 2020 passed in WPA 278 of 2020, was directed to do so. He further submits that the Prodhan of the concerned Gram Panchayat without following the procedures prescribed under the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 accorded permission for construction in favour of the private respondent no.8.
8. In support of such contention, Mr. Basu placed reliance upon Rules 17, 18 and 19 of the 2004 Rules. He, therefore, submits that the permission for construction granted by Prodhan on 26.02.2020 should be cancelled.
9. Mr. Basu places reliance upon a decision of a Division Bench of this court in the case of Profulla Kumar Ghosh v. State reported in (2013) 2 CHN 171 in support of his contention that the procedures laid down in the 2004 Rules have not been followed.
10. Mr. Mukherjee, learned senior counsel representing the private respondent no.8 submits that the private respondent no.8 filed an application before the concerned Panchayat authority for construction of a temporary tin shed structure on 10th January, 2020 and the Prodhan granted permission in favour of the private respondent no.8 upon being satisfied that the private respondent no.8 has complied with all formalities in that regard. He further submits that the Block Development Officer is not authorized under the West Bengal Panchayat Act, 1973 to decide as to whether the construction made on a private land was unauthorized one or not. He also submits that since the permission has already been granted by the Prodhan in favour of the

private respondent no.8, the construction made by the private respondent no.8 cannot be said to be an illegal and unauthorized one.

11. Mr. Mukherjee distinguished the decision in the case of Profulla Kumar Ghosh (supra) by submitting that such decision was on the interpretation of Rule 30 which is not the issue in this writ petition.
12. Heard the learned advocates for the parties and perused the materials placed.
13. It appears from the letter dated 17th February, 2020 issued by the private respondent no.8 and addressed to the Prodhan, Matigara-I Gram Panchayat that an application for construction of a temporary tin shed structure was submitted on 10th January, 2020. The private respondent no.8 in the said letter has admitted that the permission was not granted by the Panchayat authority as he had not kept any provision for toilet in his site plan and application. Second Proviso to subsection (1) of Section 23 state that a Gram Panchayat shall not accord permission for erection of a new structure or construction if the proposal for such erection or construction does not have any provision for erection or construction of a sanitary latrine of any description.
14. The private respondent was aware that the proposal for erection or construction submitted by him does not contain any provision for sanitary latrine for which he declared to construct a scientific toilet along with the tin shed structure by the letter dated 17.02.2020. It is only on the basis of such declaration, permission for construction of temporary tin shaded structure in the land in question along with a scientific toilet appears to have been granted by the Prodhan on 26th February, 2020.
15. It further appears from the record that when WPA 278 of 2020 was taken up for hearing on 24th February, 2020, submission was made by the

learned advocate for the private respondent no.8 that as per convention the private respondent no.8 has made construction in the land in question after obtaining oral permission from the Prodhan of the Gram Panchayat.

16. It is thus evident that construction has already been made by the private respondent no.8 on or before 24th February, 2020.
17. Taking note of the submission of the learned advocate for the private respondent no.8 that construction was made after obtaining oral permission from the Prodhan of the Gram Panchayat, a Coordinate Bench passed the order 24th February, 2020 by directing the Block Development Officer to consider the representation of the petitioner and take a decision with regard to the illegal construction and make specific finding on the basis of available records.
18. After going through the order of the Block Development Officer dated 19th June, 2020, this court finds that the Block Development Officer has observed that a construction shed owned by Sri Naresh Chandra Barman i.e. the private respondent no.8 herein exists with pucca wall and tin sheet and rolling shutter occupying 0.049 acres of land in LR Plot No.6 of Mouza-Thiknikata under JL No.74. The Block Development Officer further observed that 0.10 acres of land is not lying over PWD land. The Block Development Officer, however, has not returned any finding as to whether the construction which was existing on the said plot being LR Plot No.6 which is the subject matter of the writ petition was an illegal construction or not.
19. Under such circumstances, the matter should normally be remitted to such authority for deciding the issue strictly in terms of the directions passed by the court. However, in the case on hand this Court is not inclined to do so as no useful purpose will be served by relegating the

matter to the Block Development Officer for the reasons as stated hereinafter.

20. Mr. Mukherjee rightly submitted that BDO is not the authority under Section 23 of the 1973 Act to decide whether a construction within the jurisdiction of the Gram Panchayat is illegal or not and also that subsequent developments have also taken place after the order passed in the earlier writ petition.
21. Immediately after the order was passed in WPA 278 of 2020 on 24th February, 2020, Prodhan of the concerned Gram Panchayat accorded permission in favour of the private respondent no.8. Such permission for construction was accorded by the Prodhan on 26th February, 2020 by making an endorsement on the copy of the letter dated 17th February, 2020.
22. It appears that permission for construction was granted for temporary tin shed structure along with scientific toilet.
23. However, it is evident from the order of the Block Development Officer that the construction exists with pucca wall and tin sheet and rolling shutters. Such finding is on the basis on an enquiry conducted by BDO.
24. The issue to be decided in this writ petition is whether the construction made by the private respondent is an illegal and unauthorized one or not.
25. Mr. Mukherjee would contend that since permission has been granted by the Prodhan, such construction cannot be said to be an illegal one. On the other hand Mr. Basu would contend that such permission has not been granted in accordance with the West Bengal Panchayat Act, 1973 and the 2004 Rules.

26. Sub-section (2) of Section 23 of the 1973 Act states that every person seeking permission for erecting new structure shall make an application in writing to the Gram Panchayat.
27. Gram Panchayat is the authority to accord such permission in writing in terms of Section 23(1).
28. From the endorsement made by the Prodhan on 26th February, 2020 granting permission to the private respondent no.8 to construct temporary tin shed structure along with a scientific toilet appears to have been granted by the Prodhan and not the Gram Panchayat.
29. Mr. Mukherjee would contend that it is for the Panchayat authority to satisfy this court as to whether the permission was granted by the Gram Panchayat and the same was communicated by the Prodhan by way of making an endorsement dated 26th February, 2020 and the private respondent having complied with all the formalities should not be penalised for procedural violation, if any, made by the authorities of the Gram Panchayat while granting sanction.
30. However, the Panchayat authority is not represented.
31. Be that as it may, the larger issue is whether the permission for construction could have been granted after the construction has been made.
32. Section 23(1) of the 1973 Act states that 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 square meters and height not more than 6.5 meters in any area within the jurisdiction of a Gram Panchayat except with previous permission in writing from the Gram Panchayat.

33. Thus, it is evident that no construction can be made within the jurisdiction of the Gram Panchayat except with the previous permission in writing of the Gram Panchayat. Therefore, a person intending to erect any new structure or new building or make any addition to any structure or building has to first obtain permission in writing from the Gram Panchayat and thereafter raise construction thereupon.
34. The private respondents submitted at the time of hearing in WPA 278 of 2020 that they have made construction after obtaining oral permission from the Prodhan. When the statute requires permission in writing for erecting structure, construction made on alleged oral permission cannot be said to be in accordance with the 1973 Act.
35. It is evident from the letter dated 10th January, 2020 issued by the private respondent no.8 and addressed to the Prodhan, Matigara-I Gram Panchayat that the private respondent no.8 had started construction of a temporary tin shed structure measuring 5 decimals within 10 decimals of the LR Plot No.6.
36. Therefore, it has been admitted by the private respondent no.8 that he has started making construction even prior to applying for permission for construction as the application for permission claims to have been submitted by the private respondent no.8 only on 10th January, 2020.
37. Mr. Mukherjee would contend that since the private respondent has made construction of temporary tin shed structure, prior permission for raising such a construction was not necessary.
38. Proviso to subsection 2 of Section 23 states that no permission under subsection (1) of Section 23 shall be necessary for erection of any new thatched structure, tin shed or tile shed without brick wall covering an area not exceeding 18 square meter where such structure or shed does

not cover more than three fourths of the total area of the land (including appurtenant land) and there is a set back of not less than nine tenths metre on the road side.

39. It is not the case of the private respondent in the affidavit-in-opposition that the construction made by them is without brick wall. It is also not the case of the private respondents that the nature and extent of the impugned construction falls within the exceptions carved out in the said proviso. Therefore, this Court is not inclined to accept the argument of Mr. Mukherjee that permission under Section 23(1) was not necessary.
40. It is well settled that a statutory authority has to act within the four corners of a statute.
41. Mr. Mukherjee in course of his argument could not satisfy this court that the Prodhan has the authority to grant permission or approval after commencement of construction or completion of such construction.
42. This court is, therefore, of the considered view that the construction raised by the private respondent no.8 is an illegal one as the same was admittedly made without obtaining prior permission in writing from the Gram Panchayat. No provision under the 1973 Act has been placed by Mr. Mukherjee to show that the Prodhan has the power to regularize a construction which has been done without written permission.
43. It is evident from the materials on record that the Prodhan was aware at the time of granting permission for construction on 26.02.2023 that a new structure is being or has been made by the private respondent in contravention of Section 23(1). Once such contravention comes to the knowledge of the authority, Section 23(6) gets attracted and, therefore, the action of the Prodhan in granting permission on 26.02.2020 is

nothing but an attempt to legalise a construction made in contravention of the 1973 Act and the rules framed thereunder.

44. This Court, therefore, holds that the permission for construction granted by the Prodhan on 26.02.2020 is illegal and void.
45. In view thereof, this court holds that the permission granted by the Prodhan on February 26, 2020 is liable to be set aside and cancelled and the same is accordingly set aside and cancelled.
46. The decision in the case of Profulla Kumar Ghosh (supra) do not have any manner of application in the instant case as the same deals with deemed sanction.
47. Sub-section (6) of Section 23 casts an obligation upon the Panchayat authority to take steps in the event any new structure or new building or any addition to any structure or building is being or has been erected or made in contravention of provisions of sub-section (1).
48. Since the construction has been made by the private respondent on LR Plot No. 6 of Mouja Thiknikata, J.L. No.-74 in contravention of the provisions of Section 23(1), the Gram Panchayat should be directed to take steps under Section 23(6) as it is vested with the duty to control building operation within its jurisdiction.
49. This court, therefore, directs the Matigara-I Gram Panchayat to initiate a proceeding in terms of sub-section (6) of Section 23 and to conclude such proceeding in accordance with law upon giving an opportunity of hearing to the petitioner and the private respondent no.8 and/ or their authorized representatives by passing a reasoned order and communicate the same to the parties within a period of four weeks from the date of receipt of the server copy of this order.

50. With the above observations and directions, the writ petitions are disposed of.
51. There shall be no order as to costs.
52. Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)