

64 & 65
26.09.2024
d.p.

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

W.P.A 1685 of 2024

**Durbal Ghosh & Ors.
-versus
The State of West Bengal & Ors.**

**Mr. Nripen Das,
Mr. Debanjan Das.
...For the Petitioners.**

**Mr. Joyjit Choudhury, AAG,
Ms. Bedashruti Bose,
Mr. Sandip Guha Roy.
...For the State.**

**Mr. Rajat Das.
...For the Respondent No.10.**

With

W.P.A. 716 of 2024

**Jagadish Roy
-versus-
The State of West Bengal & Ors.**

**Mr. Bapi Sarkar,
Mr. Chayan Moni Bhowal.
...For the Petitioner.**

**Mr. Joyjit Choudhury, AAG,
Mr. Subir Kumar Saha, AGP,
Ms. Bedashruti Bose.
...For State.**

**Mr. Rajat Das.
...For the Respondent No.9**

Leave is granted to the learned advocate
appearing for the private respondent, Smt. Gouri Singla

to file vakalatnama in the department by tomorrow (27.09.2024).

The petitioners in both the writ petitions complain of illegal and unauthorized construction made at the behest of one Smt. Gouri Singla.

It has been submitted that construction has been made without obtaining any sanction plan from the concerned authority.

The petitioners Durbal Ghosh and others have annexed colour photographs in support of the submission that the subject illegal construction is more than G+3 storey. Prayer has been made for demolition of the unauthorized construction.

Learned advocate appearing for the petitioners relies on the judgment delivered by the Hon'ble Division Bench of this Court on 17th November, 2022 passed in MAT 1025 of 2022 with IA No. CAN 1 of 2022 (Falguni Mukherjee -vs- The State of West Bengal & Ors.) wherein the Court clearly laid down that law does not envisage grant of post facto sanction of a building plan after construction of the building is complete. A building constructed in violation of law must be held to be illegal and unauthorized and incapable of being regularized.

Learned advocate appearing for the private respondent denies the allegation of unauthorized construction.

It has been submitted that the building plan was sanctioned by the Pradhan of the Gram Panchayat in the year 2002. The building in question is only two

storied and a shed has been constructed on top to prevent the heat of the sun from damaging the property.

The Block Development Officer, being the Executive Officer of the Phansidewa Panchayat Samity has filed a report before this Court dated 8th July, 2024. The report clearly indicates that there is no record or entry indicating permission for construction of any building on the said land by the Panchayat Samity.

The said report includes a communication from the Block Land and Land Reforms Officer, Pansidewa Block dated 8th July, 2024 addressed to the Block Development Officer of the Panchayat Samity mentioning that on field verification it was detected that LR Plot No. 233 consists of a three storied building more or less 0.13 acres. The local people disclosed that the construction of the building was completed in 2018 and presently the same is possessed by Smt. Gouri Singla. The subject plot is classified as 'Rupni' i.e. agricultural land as per the Record of Rights.

The Court fails to understand as to how the Pradhan of the Gram Panchayat could sanction building plan for construction of building over any agricultural plot of land without conversion of the classification of the same. Admittedly, the Pradhan does not have the authority to sanction building plan for construction of G+4 storied building.

As on date a structure which is nearly G+4 storied, constructed without a proper sanction plan, appears to be standing at the plot being LR Plot No.233 of Mouza-Kalaram, J.L. No. 076.

In view of the above, the aforesaid two writ petitions are disposed of by directing the Block Development Officer to decide the issue of unauthorized construction as raised by the petitioners in accordance with law and on perusal of the documents placed by the parties at the earliest but positively within a period of twelve weeks from the date of communication of this order. The said respondent shall pass a reasoned order and communicate the same to all the necessary parties immediately thereafter.

A spot inspection shall be conducted to ascertain the nature and extent of unauthorized construction.

In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.

The aforesaid respondent shall restrict consideration of the issue with regard to unauthorized construction only and not enter into or decide any private dispute of the parties regarding right, title and interest in respect of the aforesaid land.

It is made clear that this Court has not entered into the merits of the claim made by the petitioners and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioners.

Both the writ petitions stand disposed of.

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

(Amrita Sinha, J.)