



2023:CHC-AS:24650

10.04.2023
Court No.19
Item No.11(DL)
srm

W.P.A. No. 6768 of 2023

Sri Rasu Santra

Versus

The State of West Bengal & Ors.

Mr. Animesh Paul,
Mr. Avirup Roy Sanyal

... for the Petitioner.

Mr. Himadri Sikher Chakraborty,
Mrs. Susnita Saha

...for the State-respondents.

Ms. Mekhla Sinha

...for the Howrah Zilla Parishad.

Mr. Saptarshi Kumar Mal,
Mr. Kausik De,
Mr. Roshan Pathak

...for the Respondent No.6.

The petitioner is directed to add Jagadishpur Gram Panchayat, Howrah and the Pradhan thereof as respondents in this proceeding.

A copy of the writ petition be served upon the said respondents.

The order passed by the District Engineer, Howrah Zilla Parishad dated February 3, 2023, is under challenge before this Court.



Prima facie, it appears that the District Engineer, Howrah Zilla Parishad has exceeded his jurisdiction by directing the respondent No.6 to obtain *post facto* sanction of an unauthorised construction, from the panchayat samiti.

It appears that the bye-laws of 2005 of the Howrah Zilla Parishad amended in 2019 clearly provide that Bally-Jagacha is within KMDA area and under the jurisdiction of the Howrah Zilla Parishad. Annexure-I of Chapter IX is referred to. The vetting capacity of the Howrah Zilla Parishad is for buildings beyond the KMDA area as per Chapter VIII. Clause 1 of Chapter IV of the bye-laws provides that the District Engineer is empowered to sanction all new building plans submitted by an applicant under the provision of the said bye-laws. Clause 3(a) provide the circumstances under which such permission would not be required.

For convenience, sub-clauses (a) and (b) of clause 3 are quoted below:

“(a) Erection, re-erection, addition to, or alteration of a parapet wall not exceeding 1.45 metres in height or boundary wall not exceeding 2.5 metres in height or cornice not exceeding 50 centimetres in width within the boundaries of the site and not overhanging a street.



- (b) For the erection of any new thatched structure, tin, shed, without brick wall covering an area not exceeding eighteen sq. metre & such structure or shed does not cover 3/4th (three fourth) of the total area.”

Thus, erection, re-erection, addition or alteration of a parapet wall not exceeding 1.45 metres in height or boundary wall not exceeding 2.5 metres in height would not require permission from the Howrah Zilla Parishad. Any structure beyond such measurement would require permission from the zilla parishad. The vetting provision applies only in cases where the height of the building is more than 6.5 metres and the plinth area is more than 300 sq. metres and the location of the construction is not within the jurisdiction of the KMDA.

Let this matter appear on **May 8, 2023**.

The parties are at liberty to exchange their affidavits in the meantime.

The District Engineer will file a report in the form of an affidavit in this regard. How the authority passed an order contrary to Chapter IV of the bye-laws and directed the party to obtain a *post facto* sanction from the panchayat samiti, shall be explained.

The District Magistrate Howrah, will look into the matter.



The panchayat authority will also produce all the records to show how and when the permission was granted for construction on RS Dag No.5171 corresponding to Khatian no.632 of mouza Jagadishpur in favour of the respondent No.6, when the Howrah Zilla Parishad was the permission granting authority.

(Shampa Sarkar, J.)