



2023:CHC-AS:7517

14.12.2022
Sl.No.2
Ct.19
sn

WPA 26540 of 2022

**Sanjoy Malik & Anr.
Vs.
The State of West Bengal & Ors.**

**Mr. Soumen Bhattacharjee
..for the petitioners**

**Mr. Jahar Dutta
Mr. Bipin Ghosh
..for the State**

**Ms. Manjuli Chowdhury
Ms. Mekhla Sinha ..for the Zilla Parishad**

**Mr. Kushal Chatterjee
Mr .Tauhid Khan
Mr. Shibjit Mitra
..for the respdts.9&10**

The petitioners have challenged the order of the District Engineer, Howrah Zilla Parishad, dated August 1, 2022 on the following grounds:-

- A) The order wrongly stated that the Zilla Parishad was not the appropriate permission granting authority, and as such, the construction could not be proceeded with by the Parishad.
- B) That the finding of a construction of G+1 storeys was incorrect and contrary to the inspection report prepared by the Assistant Engineer, Howrah Zilla Parishad.
- C) Even if Rule 28 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 was not made applicable in case of such



construction, the Zilla Parishad was the authority in this case, empowered to demolish the structure.

D) The inspection report categorically stated that the construction of a three storeyed building had been detected. In such cases the Zilla Parishad was the appropriate permission granting authority.

E) That the construction on L.R. plot no. 464 corresponding to L.R. khatian no. 427 of mouza Andul, had a plinth area of more than 300 Sq. metres and as such the panchayat authority could not have granted the sanction.

F) Any construction over and above G+1 storeys (as allegedly sanctioned by the panchayat authorities) without any permission or approval from the zilla parishad, was illegal. The panchayat authorities did not have a role to play.

The order impugned and the reports are contradictory. Thus, this Court directs the District Engineer, Howrah Zilla Parishad to cause a spot inspection of the existing structure on L.R. plot no. 464 corresponding to L.R. khatian no. 427 of mouza Andul on December 21, 2022 at 11 a.m. in the



presence of all the parties. The Assistant Engineer, Howrah Zilla Parishad shall assist in such inspection.

A report shall be filed before this Court on December 23, 2022. Such report shall categorically mention the height and the plinth area of the building. The report shall also clarify the jurisdiction of the Howrah Zilla Parishad in respect of constructions over lands under the Kolkata Metropolitan Development Authority, with reference to the provisions of Section 160A of the West Bengal Panchayat Act, 1973 read with Rule 28 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 and its own bye-laws framed under the West Bengal Town and Country (Planning & Development) Act, 1979.

The Joint Secretary, Department of Panchayat & Rural Development shall file a report upon interpreting the provisions of Rules 27 and 28 of the West Bengal Panchayat(Gram Panchayat Administration) Rules, 2004, read with the third proviso to Section 160A of the West Bengal Panchayat Act,1973.

If the construction on plot no. 464 extends beyond the limits of said plot to any other plots, the same shall also be reflected in the report.

Irrespective of the identity of the plot, the issue would be whether the alleged construction on a single



plot or covering several plots, was without any sanction from the appropriate permission granting authority. An unauthorized construction cannot be allowed to stand. The authorities are confused about their jurisdiction. Thus all parties must come ready with the queries of the court.

The Inspector-in-Charge, Sankrail Police Station shall ensure presence of the Pradhan, Andul Gram Panchayat before this Court on December 23, 2022.

Let this matter appear in the daily supplementary cause list on December 23, 2022 under the heading “Motion”.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)