



2023:CHC-AS:17843

05.04.2023
Ct.19/sl.5&7
sn

W.P.A. 28779 of 2022

Abu Chelem Laskar

Vs.

The State of West Bengal & Ors.

With

W.P.A. 5641 of 2023

Makhlufar Rahaman Gazi & Ors.

Vs.

The State of West Bengal & Ors.

Md. Sarwar Jahan

Mr. Shahzad Noor Thander

..for the petitioner in

WPA 28779/2022 & pvt.

respdt. In WPA 5641/2023

Mr. Kallol Bose

Mr. Sudarshan Ghosh

Mr. Swapnamoy Sarkar

..for the petitioner

in WPA 5641/2023

Mr. Malay Krishna Dey

Mr. M.M. Rahaman

..for the State in

WPA 28779/2022

Ms. Sutapa Sanyal

Mr. Anand Farmania

..for the State in

WPA 5641/2023

Mr. Tapas Kumar Mondal

..for the zilla parishad

As both the writ petitions revolve around the same subject matter, that is, the order passed by the District Engineer, South 24 Parganas Zilla Parishad, the writ petitions are taken up together.

The order of the District Engineer, South 24 Parganas zilla parishad clarifies that the nature of constructions of three separate houses ruled out the



conclusion that the zilla parishad was the permission granting authority. Hence, considering the height and plinth area of the three constructions and the report prepared by the Assistant Engineer, South 24 Parganas Zilla Parishad, such decision was arrived at. The height of construction 'A' was 3.05 metres having a plinth area 111 sq.mt. The height of construction 'B' was 3.05 metres having plinth area 194 sq.mt. and the height of construction 'C' was 3.05 metres having plinth area 90.53 sq.mt.

Thus, the zilla parishad was of the opinion that in terms of Section 23 read with Section 114B and Section 160A of the West Bengal Panchayat Act, 1973 as also Rule 27A of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004, the demolition should be done by the permission granting authorities, as per law.

In case of the constructions A and C the Manirtat Gram Panchayat was the permission granting authority and in case of construction B, the panchayat samiti was the permission granting authority.

Mr. Basu, learned advocate appearing for the petitioner in WPA 5641/2023 seeks execution of the order of demolition by the zilla parishad on the ground that the Hon'ble Division Bench by its order had upheld the authority of the zilla parishad to



effect demolition upon granting notice to the persons responsible for such construction.

Mr. Jahan, learned advocate appearing on behalf of the petitioner in WPA 28779/2022 submits that the District Engineer was wrong in directing the matter to be sent back to the gram panchayat and the panchayat samiti as the plinth area of three buildings taken together would indicate that the same was more than 300 sq.mt. and the zilla parishad was the authority to act in terms of the order of the Hon'ble Division Bench.

Having heard the learned advocates for the respective parties, the Court is of the opinion that the inspection report and sketch map attached to it which was prepared in presence of the parties and copies of which had been supplied to the parties, indicate that there are three separate constructions. The measurements of the height and plinth area of the constructions have been mentioned. The constructions have been labeled as A, B and C. The plinth area of the construction B is more than 150 sq.mt. but below 300 sq.mt. Hence, the zilla parishad rightly relegated the matter to the panchayat samiti. The height of the constructions A & C was found to be around 3.05 meters and the plinth area was found to be less than 150 sq.mt. and the matter had rightly been relegated to the gram panchayat.



The contention of Mr. Jahan that without the permission granting authority having come to the conclusion by initiating proper proceedings in terms of Section 23 of the West Bengal Panchayat Act, 1973 and Section 114B of the said Act, demolition could not be effected, is no longer open for decision.

The petitioner by filing WPA 5641/2023 had approached the learned Single Judge for a direction upon the police authorities to take steps with regard to an alleged illegal construction. The learned judge directed demolition. Such order was challenged before the Hon'ble Division Bench. The Hon'ble Division Bench upheld the order of the learned single judge, directing demolition.

Thus, this issue cannot be re-opened at this stage by Mr. Jahan on the ground of non-compliance of the legal procedure and violation of the principles of natural justice. The Hon'ble Division Bench had decided the matter and directed that the appropriate authority under the West Bengal Panchayat Act, 1973, should execute the order of demolition.

The zilla parishad came to a finding that it was not the appropriate authority to execute the order and opined that the Manirtat gram panchayat was the correct authority. To execute the order of demolition, Section 23(5) of the said Act has to be



applied in respect of constructions A and C and Section 114B should be applied in case of construction B.

The exercise which is now required to be undertaken by the Manirtat Gram Panchayat and the Joynagar-II panchayat samiti should be in terms of Sections 23(5) and Section 114B of the said Act. Both the sections empower the Sub Divisional Officer to effect demolition upon granting an opportunity to the persons responsible for such unauthorized constructions. The Hon'ble Division Bench also directed that notice must be served upon the persons responsible for such construction.

The zilla parishad as also the panchayat authorities and the samiti shall forward all the documents relating to the aforementioned issue to the Sub Divisional Officer, Baruipur, District South 24 Parganas for necessary steps under Sections 23(5) and 114B of the West Bengal Panchayat Act, 1973.

It is made clear that in view of the decisions of the Hon'ble Division Bench the said authority shall execute the order of demolition within a period of two months upon compliance of all legal formalities.

Both the writ petitions are disposed of.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)