

ML 185
28.04.2023
Court. No. 19
GB

WPA 17189 of 2022

Rita Ghosh
Vs
The State of West Bengal & Ors.

Mr. Arun Naskar ... for Petitioner.
Mr. Susanta Pal,
Mr. A.D. Sarkar ... for the State.
Ms. Mekhla Sinha ... for the Howrah Zilla Parishad.
Ms. Koyeli Bhattacharyya ... for the Respondent No.7.

The writ petition does not deserve any consideration in view of the consequent findings of the panchayat authorities upon holding an inspection that both the constructions of the petitioner and the respondent no.7 were beyond the plan sanctioned. The details of the deviation have been provided in the order, which is Annexure-P/6 at pages-27 and 28 of the writ petition. The parties have been asked to take steps as the deviations which have been pointed out were treated to be unauthorized construction.

The panchayat authorities have come to a finding in terms of Section 23(5) of the West Bengal Panchayat Act, 1973. Both parties have deviated from the original sanction plan.

The parties are at liberty to rectify the defects on the basis of such decision. If the defects are not removed voluntarily, the panchayat authorities shall send the entire matter along with all the documents and findings to the Sub-

Divisional Officer within a week from date and the Sub-Divisional Officer shall take steps for demolition of the deviations pointed out upon granting an opportunity of being heard to all the parties. A reasoned order shall be passed and communicated to all the parties. Necessary steps for demolition shall be taken if the parties disobey the order.

The contention of the petitioner that the construction/deviation was made sometime in 2014 and the panchayat authorities did not raise any objection at the relevant point of time, does not impress the Court. The law imposes a duty upon the citizens to raise construction strictly in accordance with the plan and as per the rules.

If an indisciplined citizen goes beyond the plan and raises constructions in violation thereof, silence of the authorities in not acting within reasonable time, cannot be a ground for protection of an otherwise unauthorized construction. Even if the authorities were silent, once this Court had directed that the authorities must take steps on the basis of the complaints and counter-complaints lodged by the parties in respect of each others constructions, the authorities were bound to proceed in accordance with the order of this Court and come to a logical conclusion. The factual findings with regard to the measurements and the extent of deviation as per the order and the inspection report, have not been proved to be incorrect by either of the parties. The writ Court cannot sit in appeal or act as a fact finding Court. The law prescribes a procedure empowering the permission granting authority to act and proceed against

unauthorized construction and as such, the Court does not find any reason to interfere in the absence of any procedural irregularity or in the absence of any allegation of mala fide, error apparent on the face of record or infraction of the principles of natural justice.

Throughout the writ petition, the petitioner has talked about the contempt committed by the Pradhan of an earlier order passed by a Coordinate Bench. There are no averments with supporting documents, *inter alia*, on the allegation that the panchayat authorities had wrongly proceeded against the petitioner's construction. There is not a single averment in the writ petition which would impress the Court to arrive at a conclusion that the panchayat had wrongly prepared the inspection report and had included incorrect data and measurement.

The allegation that the panchayat authority had failed to take into consideration the defects in the construction the respondent no.7, cannot be a ground for interference in the absence of specific pleadings. A writ Court cannot be approached with vague and unsubstantiated pleadings. The Writ Court cannot be transformed into a civil court for adjudication of factual issues.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)