

Item No. 04

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

28.03.2024

Ct-24
AGM

WPA 8703 of 2024

Manju Devi Shaw & Ors.

v.

State of West Bengal & Ors.

Mr. Prosenjit Mukherjee.

Mr. Ayan Banerjee.

Mr. Joy Chakraborty.

Mr. Ranjit Malakar.

... for the petitioners.

Mr. Pritam Chowdhury.

Mr. Gaurav Banerjee.

... for the State.

Ms. Mekhla Sinha.

Ms. Malabika Roy Dey.

... for the Howrah Zilla Parishad.

Mr. Animesh Paul.

... For the private respondent.

Order of demolition dated 2nd May, 2023 passed by the District Engineer, Howrah Zilla Parishad is impugned in the present writ petition. Specific grievance of the petitioners is that the District Engineer does not have the jurisdiction to pass the order of demolition.

Reliance has been placed on Section 160A of the West Bengal Panchayat Act, 1973 as amended.

Learned advocate representing the private respondent submits that the District Engineer considered the matter in compliance of the direction

passed by this Court on 02.01.2023 in WPA 25580 of 2020 (Sri Ajit Pandey -Vs- The State of West Bengal & Ors.).

On a perusal of the aforesaid order it appears that the Court was pleased to direct the competent authority of the Howrah Zilla Parishad to proceed in accordance with law and reach the issues raised by the petitioners to its logical conclusion.

The order further mentions that if any unauthorised construction is detected, the authority concerned shall act and proceed as per Rule 28 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004.

Section 160A of the West Bengal Panchayat Act, 1973 as amended mentions that where a new structure or new building or any addition to any structure or building is being or has been erected or made, as the case may be, in contravention of the provisions of sub-section (1), the matter shall be heard by a Hearing Officer who shall preferably be a retired senior Government Officer with the experience of having worked as a Magistrate and shall be appointed in the Zilla Parishad by the State Government. The Hearing Officer shall, after giving the owner of such building an opportunity of being heard, submit his recommendation to the Executive Officer of the Zilla Parishad. The

Executive Officer of the Zilla Parishad shall take decision for demolition of the building or a portion of the building, as the case may be, by the owner within such period as may be specified in the order and in default, issue direction to the Sub Divisional Officer concerned to effect the demolition and to recover the cost thereof from the owner as a public demand.

The aforesaid provision has been inserted by the West Bengal Panchayat (Amendment) Act, 2017 and the same came into effect on and from 09.11.2017.

In the present case, the construction in question took place after the amendment came into effect and, accordingly, the provision of Section 160A ought to have been followed at the time of passing the order of demolition. Aforesaid provision does not permit the District Engineer to pass any order of demolition.

It appears that the District Engineer, Howrah Zilla Parishad did not have the authority to pass such order.

On this ground alone, the impugned order of demolition is liable to set aside and is, accordingly, set aside.

The authority as specified under Section 160A is directed to take steps in the matter in accordance with law to deal with the unauthorized construction complained of by the private respondent.

Steps shall be taken in the matter at the earliest but positively within a period of four months from the date of communication of this order.

The parties shall be afforded reasonable opportunity of hearing at the time of consideration of the representation filed by the private respondent alleging unauthorised construction.

The parties will be at liberty to rely upon all documents in support of their individual stand before the competent authority.

All consequential steps shall be taken by the competent authority in accordance with law.

The writ petition stands disposed of.

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

(Amrita Sinha, J.)