

S/L 88
07.04.2022
Court. No. 19
GB

CAN 1 of 2019 (Old No. CAN 10216 of 2019)
In
WPA 4557 of 2018
With
CPAN 1153 of 2019

Jitendra Nath Naskar
Vs.
The State of West Bengal & Ors.

*Mr. Jahar Lal Ray,
Ms. Kavita Rani.*

...for the Petitioner.

*Mr. Indranath Mukherjee,
Mr. Jayanta Banerjee.*

...for the Respondent Nos.4 & 5.

In Re: CAN 1 of 2019 (Old No. CAN 10216 of 2019)

This application has been filed for recalling of the order dated February 27, 2019 passed by this Court. The order reads as follows:-

“Admittedly, if there is any unauthorized construction in absence of any approved building plan or deviation thereof, the Panchayat authorities concerned are duty bound to demolish such construction, if the person making such constructions does not demolish the same upon receipt of notice from the Panchayat authority. In this matter, it appears that no further steps have been taken by the Panchayat authorities.

Under such circumstances, this writ petition stands disposed of with a direction upon the Pradhan of the said Gram Panchayat to act in accordance with law and take a reasoned decision on the basis of the order already passed by him dated February 9, 2018 upon hearing the petitioner as also the respondent Nos.4, 5 and 6 and the decision taken thereof, shall be communicated to the parties thereafter.

If it is found that the construction has been made without any approved building plan or in deviation thereof, the Panchayat authority concerned will act in terms of the provisions of Section 23 of the West Bengal Panchayat Act, 1973.

However, as to the question of title and dispossession in respect of the said land, the petitioner will be at liberty to approach before the appropriate forum.

The entire exercise shall be completed within a period of 10(ten) weeks from the date of communication of this order.”

The ground for recalling is that on the day the writ petition was heard, the learned advocate, who was engaged in the matter could not appear. The other ground is that the notice dated February 19, 2018 issued by the Pradhan of Basanti Gram Panchayat was never served either upon the applicants or upon the mother of the applicant, namely, Smt. Pushpa Rani.

The order dated February 27, 2019 was passed on a prayer of the writ petitioner to direct the competent authority of the Basanti Gram Panchayat to act against the alleged illegal constructions made by the respondent nos.4 and 5 therein. It was further submitted before this Court that the panchayat authority had called upon the respondent nos.4 and 5 to produce valid documents in support of such constructions, but such documents could not be filed.

The Learned advocate appearing for the respondent nos.4 and 5, applicants herein submits that the contentions in the writ petition were not correct and as they are not represented before this Court, the actual state of affairs could not be brought to the notice of the Court. It is submitted that the construction is under a Government scheme, namely, West Bengal State Rural Housing (CFI) and as such, the general rules governing other constructions, shall not be applicable in this case.

Heard the learned advocates for the respective parties. This Court had directed that the competent authority of the said gram panchayat must act in accordance with law and take a reasoned decision in the matter upon hearing the respondent nos.4, 5 and 6. An opportunity of hearing had been granted to the applicants. It is informed that the panchayat authorities have not yet taken any action in this regard.

Thus the gram panchayat is directed to act and proceed according to law and comply with the earlier order dated February 27, 2019 which is modified accordingly. The panchayat authorities shall take into consideration the disputes raised by the applicants in this application, while disposing of the entire matter.

It is directed that, as the gram panchayat is the permission granting authority, all steps must be taken by the said gram panchayat in terms of Section 23 of the West Bengal Panchayat Act, 1973. While doing so, the following procedure shall be adopted:-

a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos.4 and 5. Advance notice of the inspection shall be served upon the petitioner and the respondent nos.4 and 5. If the parties are not available to accept notice, the authorities shall affix the notices of hearing and inspection at conspicuous places in their respective premises.

b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and was continuing, the authorities may take such interim measures by stopping such construction.

c) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.

d) Such report shall be handed over to the parties.

e) A hearing shall be given to the petitioner and the respondent nos. 4 and 5. The applicants and also their mother, who are claiming to be the beneficiaries of the housing scheme shall be entitled to produce all documents in support of such contentions before the competent authority. All documents relied upon by the respective parties, shall be exchanged.

f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of the statute.

The court has not gone into the merits of the claims and counter-claims of the parties and the issues involved shall be decided independently.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

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 learned advocate's communication.

In Re: CPAN 1153 of 2019

In view of the order passed in CAN 1 of 2019 (Old No. CAN 10216 of 2019) the contempt application being CPAN 1153 of 2019, upon taking the same to be treated as on day's list, is disposed of without any orders.

There will be no order as to costs.

In Re: CAN 2 of 2022

The prayers in the application were allowed on April 1, 2022. The application is disposed of accordingly.

(Shampa Sarkar, J.)