

Ct. 24
Item No.173
10.02.2021
(suvendu)

**CPAN 218 OF 2020
(Soumya Sahu Vs. Sahanara Begum)
With**

**CAN 1 OF 2020
(Subrata Sahoo & Anr. Vs. Soumya Sahu)
In**

**WPA 12449 OF 2019
(Soumya Sahu Vs. The State of West Bengal & Ors.)**

Mr. Sukumar Ghosh
Ms. Riya Ghosh

.....for the applicant
(In CAN 1/2020)

Mr. Subhamay Patra

.....for the respondent
(In CAN 1/2020)

In Re. CPAN 218 of 2020 and CAN 1 of 2020

The writ petitioner alleges non-compliance of the direction passed in the order dated 23rd September, 2019. By the said order, the Pradhan of the concerned Gram Panchayat was directed to take a decision in respect of the petitioner's representation within a specified time after giving an opportunity of hearing to the petitioner or his authorized representative. The petitioner submits that the Pradhan of the concerned Gram Panchayat has not taken any step to comply the aforesaid order of the Court.

An application for recalling, being CAN 1 of 2020, has been filed by the respondent nos. 5 and 6 of the writ petition. The respondent nos. 5 and 6 were the private respondents, who did not appear before the Court on 23rd September, 2019, despite service of notice upon them. The Court passed order for consideration of the representation of the writ petitioner after giving him an opportunity of hearing but did not give any opportunity of hearing to the private parties. The allegation of the petitioner was that the private parties were making illegal and unauthorized construction.

The writ petitioner has opposed the application filed by the respondent nos. 5 and 6 for recalling the order dated 23rd September, 2019. The petitioner relies upon a judgement delivered by the Hon'ble Supreme Court reported in 1987 AIR 943 [State of Uttar Pradesh Vs. Brahma Datt Sharma & Anr.] wherein the Court was of the opinion that no miscellaneous application to be filed in a writ petition to revive the proceedings in respect of the subsequent events after two years. If the respondent was aggrieved by the notice, he could have filed a separate petition under Article 226 of the Constitution of India challenging the validity of the notice as it provided separate cause of action.

In my opinion, the aforesaid decision will not be applicable in the facts and circumstances of the instant case as the application has been filed for recalling of the order immediately when the same came to the notice of the private respondents. Moreover, by way of the recalling application no subsequent events have been brought on record. The private respondents merely pray for a direction for giving them an opportunity of hearing at the time when the representation of the petitioner is to be considered. Not allowing the same would amount to violation of principles of natural justice which the Court ought not to permit. Accordingly, the objection raised by the petitioner for not entertaining the application for recalling made by the private respondents stands overruled.

It appears that the concerned Pradhan was supposed to take a decision with regard to the alleged unauthorized construction being made by the private respondents without giving them an opportunity of hearing. The same would certainly amount to violation of principle of natural justice. The application filed by the private respondents for recalling the aforesaid order is, therefore, liable to be allowed. The order dated 23rd September, 2019 is accordingly modified to the extent that the Pradhan

of the Amalhanda Gram Panchayat, being the respondent no.3, shall consider the representation of the petitioner dated 8th May, 2019 within a period of the eight weeks from the date of communication of this order after giving an opportunity of hearing to the petitioner or his authorized representative and also giving an opportunity of hearing to the respondent nos. 5 and 6. The Pradhan shall pass a reasoned order and communicate the same to the petitioner and the private parties immediately thereafter.

The rest of the directions passed in the order dated 23rd September, 2019 remain unaltered which implies that if it is found that the private respondents have been carrying on unauthorized construction then the Pradhan will be at liberty to take step in accordance with law for demolition of such unauthorized construction.

Both the parties will be entitled to rely upon all the documents in support of their respective stand before the Pradhan.

Accordingly, the application for recalling stands disposed of.

The application filed by the petitioner alleging contempt stands dropped.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Amrita Sinha, J.)