

S/L 2
14.09.2021
Court. No. 19
GB

WPA 14121 of 2021

Keka Samanta
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Nilanjan Bhattacharjee,
Mr. Kaustuv Shome.

...for the Petitioner.

Mr. Soumitra Bandopadhyay,
Mr. Subhasis Bandopadhyay.

...for the State.

Mr. Sailendranath Chakraborty,
Mr. A. Chakraborty.

...for the Respondent No.7.

The petitioner alleges that the Pradhan of Monteswar Gram Panchayat has acted in an arbitrary and *mala fide* manner by issuing notices to the petitioner with regard to the alleged unauthorized construction by completely misinterpreting the earlier order of this Court dated November 5, 2019.

It is the contention of the petitioner that the Pradhan acted on the directions of the police authorities. He alleges that the police authorities do not have any power or jurisdiction to direct the Pradhan to take steps for demolition.

Next, it is contended that although the petitioner requested the Pradhan to cause an inspection in order to ascertain the extent of unauthorized construction and the correctness of the allegation of the respondent no.7, the

Panchayat authority sat tight over the matter and instead issued notices directing the petitioner to produce orders passed in any proceedings initiated by the petitioner, being aggrieved by the order of this Court dated November 5, 2019 in W.P. No.12556 (W) of 2019.

Mr. Chakraborty, learned advocate appearing on behalf of the respondent no.7 submits that the petitioner had constructed in deviation of the plan. That the Panchayat authorities acted on the basis of the order of this Court. That there was no illegality in the order of this Court and the petitioner was within her rights to challenge the order of this Court in a higher forum. Instead, the petitioner accepted the order of this Court. This Court directed that if there is any unauthorized construction, then the proceeding for demolition should be initiated.

During the pendency of this writ petition, the petitioner received a notice issued by the Pradhan, Monteswar Gram Panchayat dated September 10, 2021, which has been filed before this Court by way of a supplementary affidavit. In the said notice the petitioner has been asked to demolish the unauthorized construction within September 15, 2021, failing which steps would be taken for demolition of the same.

It is submitted by Mr. Chakraborty that a contempt application has been filed by the respondent no.7 alleging that the order of this Court had not been complied with.

This Court is of the view that the subsequent notice dated September 10, 2021 has been issued by the Pradhan of the Monteswar Gram Panchayat only to avoid the contempt proceedings.

It is an admitted case of both the parties that no hearing was given, no inspection was made in order to assess the extent of deviation or unauthorized construction.

It is observed that a statutory functionary cannot cause demolition, unless the provisions of law are complied with, including granting a hearing to the person whose premises has been decided to be unauthorized.

This Court does not accept the argument of the petitioner that there has been no unauthorized construction as the same is within the domain of the authority to detect upon inspection by comparing the construction with the sanction plan or to find out whether the construction has been made in absence of a sanction plan. Admittedly, in this case no inspection was held and no hearing was given.

Thus, without going into the merits of the claim of the petitioner and the counter-claim of the respondent no.7 this Court sets aside the proceedings initiated and also the notice dated September 10, 2021 with a further direction upon the competent authority of the Monteswar Gram Panchayat to act and proceed afresh in accordance with law on the basis of the order of this Court dated November 5, 2019. It goes without saying that an inspection shall be made in presence of the parties. A copy of the report prepared during such

inspection shall be supplied to the parties. The parties shall be allowed to make their submissions and submit all documents in support of their contentions and a reasoned order shall be passed. If it is found that there is unauthorized construction, then the proceedings will be reached to its logical conclusion in accordance with law.

As the Panchayat authority is not represented before this Court despite service, the Block Development Officer, Monteswar Block shall ensure that the Panchayat authorities comply with this order in its letter and spirit. This Court is also conscious of the fact that the petitioner has tried to avoid the proceeding by filing the writ petition. It is directed that the petitioner shall cooperate with the proceedings and shall participate in the proceeding as per the requirements of the competent authority of the Monteswar Gram Panchayat.

The entire exercise shall be completed within a period of three months from 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 learned advocate's communication.

(Shampa Sarkar, J.)