

19.03.2021
Sl. No. 17
srm

CPAN 457 of 2020
In
WPA 1441 of 2018
Makhlufar Rahaman Gazi
Vs.
Saraswati Naskar

Mr. Sudarshan Ghosh

...for the Petitioner.

This contempt application has been filed alleging non-compliance of the order passed by this court in W.P.A. 1441 of 2018. By an order dated March 18, 2019 W.P.A 1441 of 2018 was disposed of with the following order:-

“Under such circumstances, this writ petition is disposed of with a direction upon the Pradhan of the Monirhat Gram Panchayat, Joynagar-II, District South 24-Parganas to consider and dispose of the representation of the petitioner and pass a reasoned order upon hearing the petitioner as also the respondent nos.7&8. The parties will be at liberty to furnish all documents and evidence in support of their claim and counterclaim.

If it is found that the allegation of the petitioner is correct then the authorities shall act and proceed in accordance with law.

It is made clear that the authorities will only restrict its finding as to whether the building has been constructed without permission or in deviation or in absence of a sanctioned building plan but, the question of title or encroachment cannot be decided by the concerned authorities. After hearing the parties, a reasoned order will be passed and communicated to all concerned.

There will be, however, no order as to costs.

The entire exercise should be completed within six weeks from date of communication of the order.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.”

The petitioner filed a contempt application being WPCRC 273 of 2019. Rule was issued. The alleged contemnor, that is the Pradhan of Monirtat Gram Panchayet, District South 24- Parganas was produced before this court on February 27, 2020 by the police authorities. A report was filed showing compliance of the order to the effect that a hearing was held between the parties and unauthorised construction was detected. The contempt proceeding was thus dropped as the alleged contemnor was expected to act in accordance with law.

Now, CPAN 457 of 2020 has been filed alleging violation of the order passed in the contempt proceeding. Although a direction was passed for service upon the alleged contemnor, in my opinion, the second contempt application is not maintainable as there was no positive direction upon the alleged contemnor to do certain acts. If it is the allegation of the petitioner that the alleged contemnor has not acted in accordance with law after detecting the unauthorised construction, remedy of the petitioner would be to file an appropriate application before the appropriate forum alleging violation or non-compliance of the statutory provisions. In the earlier contempt application, it was alleged that the contemnor had not called the petitioner for a hearing as directed by this court. While disposing of the contempt

application upon considering the report this court found that steps had been taken by the contemnor. A report was filed annexing a resolution. It was stated that the hearing was held and an unauthorised construction was detected. Thus, the contempt proceedings were dropped. Again by way of filing a second contempt application, the petitioner now cannot seek an order of demolition. It is for the petitioner to approach the appropriate forum for appropriate reliefs under the law and substantiate his case on the basis of the documents and orders passed in the contempt proceeding that is WPCRC 273 of 2019.

This contempt application is disposed of.

(Shampa Sarkar, J.)