

S/L 8 & 9
05.09.2022
Court. No. 19
GB

WPA 3516 of 2022

Biswajit Banerjee
VS
The State of West Bengal & Ors.

With

WPA 382 of 2022

Debdas Ash & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Raghunath Chakraborty,
Mr. Mahaboob Ahmed,
Ms. Amrita De.

...for the Petitioner (in WPA 3516 of 2022
...for the Respondent No.9 (in WPA 382 of 2022).

Mr. Tapas Kumar Dey,
Mr. Rakesh Roy.

...for the Petitioner (in WPA 382 of 2022)
...for the Respondent Nos.8 & 9 (in WPA 3516 of
2022).

Mr. Lalit Mohan Mahata,
Mr. Rudranil De.

...for the State (in WPA 3516 of 2022).

Mr. Subhabrata Datta,
Mr. Banibrata Datta.

...for the State (in WPA 382 of 2022).

Mr. Sovan Mukherjee.

...for the Respondent Nos.10 & 11.

Both the writ petitions were being heard analogously.

WPA 382 of 2022 is a challenge to the order of demolition passed by the Sub-Divisional Officer Serampore, dated December 21, 2021. The petitioners in the said writ petition, are the respondents nos.8 and 9 in WPA 3516 of 2022.

WPA 3516 of 2022 has been filed by one Biswajit Banerjee for implementation of the order dated December

21, 2021 passed by the Sub-Divisional Officer, Serampore. By the said order, the Sub-Divisional Officer directed Debdas Ash and Haradhan Ash to demolish the entire illegal construction on Plot Nos.446 and 447 of Mouza-Krishnanagar, Police Station – Jangipara, District – Hooghly at their own expenses. Failing such demolition, the Block Development Officer, Jangipara Block was directed to demolish the illegal construction within two weeks from the receipt of the order.

According to the petitioner, despite a considerable lapse of time since the order of demolition had been passed, the order of the Sub-Divisional Officer, Serampore had not been complied with. Not only have the persons responsible for such unauthorized construction blatantly disregarded such order, but the Block Development Officer and the other authorities also ignored such order, thereby allowing an unauthorized construction to continue. There is a specific finding that there was no sanction, in respect of such construction.

The learned advocate for the respondent nos.8 and 9 submits that the proper authority to take a decision in respect of such construction, would be the Gram Panchayat. He further raises the plea of deemed sanction.

The learned advocate for the respondent nos.10 and 11, who are some of the neighbours of the petitioner and plaintiffs in a suit pending before the learned civil court against the respondent nos.8 and 9, submits that part of the illegal construction had also affected their property. He

further submits that the Sub-Divisional Officer had allowed the respondent nos.10 and 11 to participate in the proceedings and thereafter the order of demolition was passed upon consideration of the entire picture.

The law with regard to unauthorized construction has been provided under Section 23 (5) of the West Bengal Panchayat Act, 1973.

The petitioners filed a writ petition challenging inaction of the Gram Panchayat in initiating proceedings against the respondent nos.8 and 9. The order of the learned single Judge, was upon the concerned authority to grant an opportunity of hearing to the petitioner as also the respondents and to take steps in accordance with law, in case it was found that the construction was unauthorized. The said order was challenged in appeal by the respondent nos.8 and 9 and the Hon'ble Division Bench directed the Sub-Divisional Officer to consider the issue and pass a reasoned order. Accordingly, the Sub-Divisional Officer has passed the reasoned order, inter alia, finding that the building was unauthorized and erected without any sanction.

Under such circumstances, the point raised by the respondents nos.8 and 9 (petitioners in WPA 382 of 2022) with regard to the jurisdiction of the Sub-Divisional Officer and non-compliance of the procedure, laid down in Section 23(5) of the West Bengal Panchayat Act, 1973, cannot be entertained. The appeal court had directed the Sub-Divisional Officer to hear out the parties and pass a reasoned order. The plea of deemed sanction, which has now been

raised by the petitioners in WPA 382 of 2022, does not find any mention either in the order of the learned single Judge or in the order of the Hon'ble Division Bench. Thus, such plea is barred by the principles of constructive res judicata. The petitioner in WPA 382 of 2022 cannot show any document which would indicate that they had raised this issued before the authority at any stage. Neither had they intimated the authorities that the construction would be commenced by invocation of the provisions of deemed sanction. A construction without any sanction, cannot be permitted to remain, event for a single day.

Under such circumstances the writ petitions being WPA 382 of 2022 and WPA 3516 of 2022 are disposed of. The authorities and the concerned Block Development Officer, are directed to act on the basis of the order passed by the Sub-Divisional Officer, Serampore.

It is made clear that before any demolition work takes places, the safety and security of the surrounding buildings and the residents therein, shall be taken into consideration and ensured.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)