

S/L 5
06.04.2022
Court. No. 19
GB

WPA 4696 of 2022

Sri Gorachand Panja
VS
The state of West Bengal & Ors.

Mr. Gautam Banerjee.

...for the Petitioner.

*Mr. N. Srinivas,
Mr. M.K. Singh.*

...for the Respondent No.7.

Affidavit-of-service filed in Court today be kept with the record.

The writ petition has been filed challenging an order of demolition dated March 10, 2022 issued by the Pradhan, Pursurah-II Gram Panchayat, Sodepur, Hooghly. The said order has been passed without holding any inspection of the premises in question. No hearing was given to the parties.

The learned advocate for the respondent no.7 at whose instance the order was earlier passed by this Court, submits that even the said respondent, who was the complainant before the panchayat authorities, did not get any notice of inspection or hearing. A letter has been produced before this Court, from which it appears that the learned advocate for the respondent no.7 had also given a notice dated March 4, 2022 to the panchayat authorities requesting the authorities to grant a notice to the said party, before any inspection was made.

It is submitted by the learned advocate for the respondent no.7 that apart from the complaint with regard to

the unauthorized construction, no other proceedings have been initiated by the respondent no.7 against the petitioner.

Admittedly, the panchayat authorities did not hold an inspection in the presence of the parties. No hearing was given to either of the parties. The order of demolition was passed without following the law.

In view of the non-compliance of the principles of natural justice as also non-compliance of the order of this Court dated February 23, 2022, the order of demolition dated March 10, 2022 is set aside.

The direction of this Court passed earlier was wrongly interpreted as a direction upon the Pradhan to demolish the structure. The direction was that in view of a complaint lodged by the respondent no.7 with regard to unauthorized construction, the panchayat authorities must proceed in accordance with law and the Court had categorically indicated the procedure to be followed. Such procedure has not been followed. This amounts to arbitrariness, irrationality and also an illegality in view of the violation of the principles of natural justice.

The panchayat authorities are directed to comply with the order dated February 23, 2022 passed in WPA 1646 of 2022 in its letter and spirit and proceed with the matter as directed therein, namely :-

“Having considered the rival contentions of the parties, this writ petition is disposed of with a direction upon the competent authority of the Pursurah-II Gram Panchayat to dispose of the complaint of the petitioner with regard to the alleged unauthorized construction in accordance with law by adhering to the following procedure:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent No.6 within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondents and all other interested parties. If the parties are not available to accept notice, the authorities shall affix the notice 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 petitioners and the respondents. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority. All points raised by either party, will be decided.

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 the issues involved shall be decided independently.

g) This order will not prejudice the civil suit, which is pending between other co-sharers.

h) The proceeding shall be restricted only to the allegations of unauthorised construction.

The entire exercise shall be completed within a period of six 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.

(Shampa Sarkar, J.)