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27.04.2022.
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 4754 of 2022

Indrajyoti Dutta

-vs.-

The State of West Bengal & Ors.

Mr. Dipankar Pal,
Mr. Joy Chakraborty,
Mr. Partha Sarathi Ghosh,
Mr. Sandip Dinda
...for the petitioner

Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata
...for the State

Mr. Manas Kumar Das
...for the respondent nos. 7 to 9

Leave is granted to the petitioner to file a supplementary affidavit. Such supplementary affidavit be kept on record.

Although learned counsel appearing for the private respondents submits that he has not got any copy of the supplementary affidavit, it is contended by learned counsel for the petitioner that copies of the same have already been served on the private respondents.

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

Learned counsel appearing for the petitioner contends that despite the concerned Panchayat Pradhan having held that the construction made by the private respondents, regarding which an allegation was made by the petitioner, was unauthorized, no steps have been taken by the Pradhan to refer the matter within the contemplation of Section 23(5) of the West Bengal Panchayat Act, 1973, as amended, till date.

Learned counsel appearing for the private respondents vehemently opposes the contention that the construction was unauthorized and submits that the private respondents made the construction in accordance with law.

Learned counsel appearing for the respondent-authorities contends that it is the Sub-Divisional Officer who has to take appropriate steps in such regard.

Upon hearing learned counsel for the parties, it is evident that Section 23(5) of the 1973 Act, as correctly indicated by learned counsel appearing for the petitioner, provides that the permission granting authority has to refer the matter to the Sub-Divisional Officer concerned in matters concerning allegations regarding construction of structures being erected in contravention of the provisions of Section 23(1) of the Act of 1973.

Since a detailed course of action of the Sub-Divisional Officer is also provided in sub-section (5) of

Section 23, it would only be appropriate if the concerned Pradhan refers the matter to the concerned Sub-Divisional Officer expeditiously.

Accordingly, W.P.A. No. 4754 of 2022 is disposed of by directing the respondent no. 4, the Pradhan, Panchuthupi Gram Panchayat, to refer the complaint made by the petitioner in respect of the construction allegedly raised by the private respondents to the Sub-Divisional Officer, that is, the respondent no. 2, as envisaged in Section 23(5) of the 1973 Act. Such reference shall be made within a week from date.

Upon such reference, the Sub-Divisional Officer shall, as provided in sub section (5) of Section 23 of the 1973 Act, take a decision in that regard and consequential appropriate steps, as expeditiously as possible, preferably within a month from such reference being made to the Sub-Divisional Officer, upon giving adequate opportunity of hearing to all concerned.

All parties shall act on the server copy of this order without insisting upon prior production of a certified copy thereof for the purpose of implementation of this order.

Since no affidavits have been called for, it is deemed that none of the allegations made in the writ petition and/or supplementary affidavit are admitted by any of the respondents.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)