

30.03.2022

Sl. No. 15

ss

W.P.A. 6245 of 2021

Rita Ghosh

Vs.

The State of West Bengal & ors.

Mr. Arun Naskar

... for the petitioner

Mr. Tarun Kumar Ghosh

Mrs. Debarati Sen Bose

... for the State

Ms. Koyeli Bhattacharyya

... for the respondent no.7

The petitioner is aggrieved by the order of demolition passed by the Pradhan of Narna Gram Panchayat, dated February 9, 2021.

According to the petitioner, the order is cryptic and without any reason. It is further alleged that, while deciding the extent and nature of unauthorised construction of the respondent nos.7 and 8, the petitioner's unauthorised construction was also directed to be demolished.

It is contended by the petitioner that the concerned Panchayat authorities were directed by this Court in W.P.A.17482 of 2018, to look into the allegation of unauthorised construction made by the respondent nos.7 and 8 on plot no.3088, Mouza Dafarpur, J. L. No.38, Police Station Domjur, District Howrah. Whereas, the authorities also proceeded against the construction made by the petitioner and passed an order, inter alia, holding that both the

petitioner and the respondent nos.7 and 8 had made some unauthorised constructions. By the order impugned, the parties were directed to take steps with regard to their respective unauthorised constructions, failing which, steps would be taken by the authorities, for demolition.

Reliance has been placed on the order of this Court, passed earlier.

The allegations are that this Court had directed the authorities to proceed against the construction made by the respondent nos.7. Instead of restricting the enquiry and demolition proceeding to the construction made by the respondent nos.7, the Panchayat authorities also proceeded to deal with the construction made by the petitioner, without holding any enquiry or inspection of the construction of the petitioner and without recording any evidence in this regard.

It is alleged that no enquiry report was submitted in respect of such unauthorised construction by the petitioner, but the order impugned was passed mechanically.

It appears that the order dated February 9, 2021 has been passed upon hearing both the parties and the order of the Pradhan appears at page 49 and 50 of the writ petition. The Pradhan concluded that

both the parties had deviated from the sanction plan and had directed the parties to rectify such deviation.

The contention of the petitioner is that before the Pradhan had come to the conclusion about the deviation made by the petitioner, an inspection of the premises of the petitioner, should have been held. A report ought to have been prepared and the petitioner ought to have been allowed to controvert such allegation.

This is reasonable point raised by the petitioner and as such, the order dated January 19, 2021 and also the notice dated February 9, 2021 are set aside.

The Panchayat authorities definitely have the right to proceed against any construction, which is unauthorised.

Thus, the authorities could also proceed against the construction of the writ petitioner, if in the opinion of the authorities, the same was in violation of the plan. However, before a decision was passed, an inspection ought to have been made and a reasonable opportunity ought to have been given to the petitioner to controvert the allegations of unauthorised construction. A hearing should have been given thereafter and the contentions of the petitioner should have been considered.

While deciding the issue of unauthorized construction raised the respondent nos.7 on the basis

of the complaint of the petitioner, the Panchayat authorities also proceeded against the construction of the writ petitioner. This was not a proper course of action.

Thus, the authorities shall proceed afresh in accordance with law, in respect of both the constructions made by the petitioner and the respondent nos.7 by adhering to the following procedure :

- a) An inspection of the premises of both the petitioner and the respondent no.7 shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no.7 and all the interested parties within three weeks. Advance notices of the inspection shall be served upon the petitioner and the respondent no.7 and the interested parties. If the parties are not available to accept notice, the authorities shall affix the notices 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 constructions were without permission and were continuing, the authorities may take such interim measures by stopping such construction.
- c) Reports of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.

- d) Such reports shall be handed over to the parties.
- e) A hearing shall be given to the petitioner and the respondent no.7 and the interested parties. The parties must also be allowed to furnish their written objections/versions to both the reports and adduce oral and documentary evidence in support of their contentions, before the competent authority. All points raised by the parties shall be decided. All documents filed by the parties, if any, shall be exchanged.
- 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, in respect of both the constructions.

The court has not gone into the merits of the claims and counter-claims of the parties and the issues involved shall be decided independently.

The entire exercise shall be completed within a period of four 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.)