

09. 08.03.2022
BD Ct.15

W.P.A. 5081 of 2016

(Through Video Conference)

Md. Subid Ali

-vs-

The Principal Secretary to the
Government of West Bengal, Department of
Panchayat & Rural Development & Ors.

Mr. Vinay Kumar Purohit
Mr. Ziaur Rahaman
... for the petitioner.

Ms. Chaitali Bhattacharya
Mr. Kartick Chandra Kapas
... for the State.

Mr. Jayanta Kumar Das
Mr. Gourav Kumar Das
... for the respondent no. 7.

The writ petition relates to making construction by the respondent no. 8. It is the contention of the writ petitioner that without prior sanction plan such construction was carried out by the respondent no. 8 on a plot adjacent to the premises of the petitioner.

On hearing the learned advocates appearing for the parties it appears that vide order dated 11th May, 2017 passed by Co-ordinate Bench a report was called for from the Block Development Officer, Piali Town, District- South 24 Parganas. By the said order dated 11th May, 2017 the Co-ordinate Bench also directed the report must specify

whether the construction alleged to have been carried out by the private respondent is pursuant to any plan sanctioned by the appropriate authority and whether in the process of construction, any plan, if sanctioned, has been violated by the private respondent. Pursuant to such order dated 11th May, 2017 the concerned Block Development Officer has filed a report in the form of an affidavit affirmed on 4th August, 2017 annexing certain documents. The Block Development Officer prepared such report based on the findings made by the Sub-Assistant Engineer, Baruipur Development Block as contained in the note sheet which is at page 9 of the said report. As per the findings of the Sub-Assistant Engineer, it appears the space of 2(two) ft. has been kept open by the private respondent while constructing her building and it was also recorded therein the plan was sanctioned in favour of the private respondent on 19th January, 2012. Eventually the Block Development Officer vide letter dated 9th August, 2013 addressed to the Pradhan Mallickpur Gram Panchayat, being the respondent no. 6 requested him to act as per norms of Panchayat Rules since only two (2) ft. space has been maintained in between the houses of the writ petitioner and the

private respondent on construction carried out by the private respondent.

On perusal of such report this Court by passing order on 15th February, 2022 directed the Pradhan to be represented before this Court on the next date and accordingly the matter was fixed for hearing. Today the Pradhan remains unrepresented.

However, the State respondents including the Block Development Officer, is represented by Ms. Chaitali Bhattacharya, learned Senior Government Advocate, private respondent is represented by Mr. Jayanta Kumar Das, learned advocate.

Having heard the learned advocates appearing for the writ petitioner, State respondents as well as the private respondent this Court directs Pradhan, Mallickpur Gram Panchayat, being the respondent no. 6, to take a decision on the nature of construction as carried out by the respondent no. 8 based on the letter dated 9th August, 2013 issued by the concerned Block Development Officer, and the enquiry report of the Sub-Assistant Engineer dated 24th May, 2013 within a period of eight (8) weeks from the date of communication after granting opportunity of hearing to the writ

petitioner and the respondent no. 8 or their representatives and pass a reasoned order. The order to be passed by the respondent no. 6 in terms of the order passed by this Court shall be communicated to the petitioner and the respondent no. 8 within one week thereafter.

It is made clear that if Pradhan comes to a conclusion that the issue involved in this writ petition cannot be decided by him but it should be decided by the concerned Zilla Parishad South 24 Parganas, he shall pass necessary order and forward the issue to the concerned authority of the Zilla Parishad, South 24 Parganas within the aforesaid period and if the issue is forwarded to the Zilla Parishad the appropriate authority of the Zilla Parishad is directed to take a decision within four weeks from the date of receipt of communication from the respondent no. 6.

It has been made clear that if the concerned authority finds that the construction has been carried out by the respondent no. 8 unauthorisedly necessary order to be passed in accordance with law for demolition of such construction.

Advocate on record of the writ petitioner is granted liberty to amend the cause title of the writ petition by 10th March, 2022 and add the Zilla

Parishad South 24 Parganas, as a party respondent and communicate this order along with amended writ petition and report of the Block Development Officer to the Zilla Parishad by 15th March, 2022.

With the above direction the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent Photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)