

06
Ct. 24
15.06.2022
tbsr

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**W.P.A 7695 of 2022
IA No: CAN 1 of 2022
CAN 2 of 2022**

**Gopal Maity & Anr.
-versus
State of West Bengal & Ors.**

Mr. Debashis Banerjee
Mr. Supreem Naskar
...For the Petitioners

Mr. Sudipto Panda
Mr. Sajal Kumar Pandit
...For the State

Mr. Uttam Kr. Bhattacharya
Mr. Kaustuv Mishra
...For the respondent Nos. 3 & 4

Mr. B.K. Samanta
...For the respondent no.6

The petitioners are aggrieved by the order dated 28th March, 2022 passed by the Sub-Divisional Magistrate, Tamluk, Purba Medinipur invoking provision under Section 23(6) of the West Bengal Panchayat Act, 1973 and directing the Block Development Officer, Nanda Kumar to demolish the unauthorized portion of the construction of the building in plot no 35, JL No. 119, Mouza Mohammadpur.

The petitioners are further aggrieved by the order dated 13th April, 2022 passed by the Additional Executive Officer, Purba Medinipur, Zilla Parishad relying upon the order passed by the Sub-Divisional Magistrate, Tamluk, Purba Medinipur cancelling the

building plan relying upon the order of demolition allegedly passed by the Sub-Divisional Officer, Tamluk.

It appears from records that this Court by an order dated 17th November, 2021 passed in WPA No. 17453 of 2021 (Gopal Maity and Another Vs. State of West Bengal and Others) directed the Sub-Divisional Officer, Tamluk Sub-Division, Purba Medinipur to act on the basis of provisions of Section 23(5) of the Panchayat Act, 1973.

Instead of the Sub-Divisional Officer taking steps in the matter pursuant to the order passed by this Court, the Sub-Divisional Magistrate, Tamluk, Purba Medinipur acted allegedly in accordance with the said order and passed the impugned order of demolition.

The Assistant Executive Officer of the Zilla Parishad took note of the order passed on 28th March, 2022 by the Sub-Divisional Magistrate but mistakenly recorded that the Sub-Divisional Officer, Tamluk passed the order on 28th March, 2022.

Fact remains that the subsequent order of cancellation of the building plan was passed by the Additional Executive Officer of the Purba Medinipur, Zilla Parishad relying upon the order passed by the Sub-Divisional Magistrate.

The Court is of the opinion that as there was a specific direction upon the Sub-Divisional Officer to take steps in the matter, the Sub-Divisional Magistrate could not have and ought not to have acted in terms of the order passed by the Court.

When there was a specific direction upon the Sub-Divisional Officer to perform any act, it was incumbent that the said officer should act in accordance with the said or not at all. The Sub-Divisional Magistrate could not have usurped jurisdiction of the Sub-Divisional Officer and passed order in the matter.

As the initial order passed by the Sub-Divisional Magistrate was not in accordance with the order passed by this Court, accordingly the subsequent order passed by the Additional Executive Officer of the Zilla Parishad relying upon the order of the Sub-Divisional Magistrate cannot stand in the eye of law.

It appears that the petitioners have already challenged the order passed by the Sub-Divisional Magistrate by filing appeal before the District Magistrate on 12th April, 2022 and the said appeal is pending consideration till date.

As this Court has come to a conclusive finding that the order passed by the Sub-Divisional Magistrate was not in accordance with the order passed by this Court on an earlier occasion, accordingly, there is no requirement with proceeding with the appeal which has been filed before the District Magistrate, Purba Medinipur.

The order passed by the Sub-divisional Magistrate on 28th March, 2022 and the subsequent order passed by the Additional Executive Officer, Purba Medinipur Zilla Parishad are set aside and quashed.

The concerned authorities are directed to act in strict accordance with the direction passed by the Court on 17th November, 2021 in WPA No. 17453 of 2021.

All the respondent authorities are directed to take appropriate steps in the matter strictly in accordance with law on merits, after giving reasonable opportunity of hearing to all the parties.

Affidavit in opposition filed by the respondent nos. 3, 4 and 6 in Court today be kept with the records.

The application for vacating the interim order being CAN 1 of 2022 is not on record. A copy of the same has been handed over to the Court by the learned advocate appearing on behalf of the respondent no. 6.

The department is directed to transmit CAN 1 of 2022 immediately before this Court so that the same may be tagged with the original file. On receipt of the application from the department the copy of the application that has been handed over by the learned advocate in Court today be returned.

The Writ petition is allowed. The connected applications being CAN 1 of 2022 and CAN 2 of 2022 are disposed of.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)