

09.02.2022
Court No. 19
Item no.07
CP

WPA 16102 of 2021

Biswanath Karmakar
Vs.
The State of West Bengal & ors.

Md. Sarwar Jahan
Mr. Maidul Islam Kayal
....for the petitioner.

Mr. Gausul Alam
Sk. Afrojul Haque
....for the State respondents.

Mr. Mrinal Kanti Mukherjee
....for the respondent nos. 10 & 11.

The short point involved in this writ petition is whether the Sub-Divisional Officer, Baruipur, South 24 Parganas while ordering the petitioner to demolish 1.5 ft of the structure had served the reports prepared by the concerned Block Land and Land Reforms Officer and the Block Development Officer, Bhangor II Block.

The learned advocate for the State respondents have not been able to apprise the court that the said reports were served.

The court is of the opinion that an order which visits a person with civil consequences and is used against him, must be served upon him before the same is relied upon by an authority and used against the said person. There is nothing on record to show

that the reports were served. The court is satisfied that the principles of natural justice has been violated.

In the decision of Supreme Court reported in **(1993) 4 SCC 727 (Managing Director, ECIL vs. B. Karunakar)**, the Hon'ble Apex court held that the reason why the right to receive the report of the authority is considered to be an essential part of reasonable opportunity and also of the principle of natural justice is that the findings recorded by the authority form an important material taken as an evidence. If the finding is based on the report as one of the documents considered by the authority, the principles of natural justice require that the petitioner should have a fair opportunity to meet, explain and controvert it before his building is condemned. Denial of such opportunity amounts to negation of the tenets of justice and fair opportunity to the petitioner to consider the findings recorded by the authority without giving the petitioner an opportunity to reply to it. Therefore, it is required that before the authority comes to its own conclusions, the petitioner should have an opportunity to reply to the report relied upon by the authority. The authority is then required to consider the report, and the representation of the petitioner against it.

The court does not decide the merits of the order impugned. The question of unauthorized construction is left open to be decided by the appropriate authorities under Section 23(5) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as 'the said Act'). The reports relied upon, as mentioned in the order impugned dated August 18, 2021, shall be served upon the petitioner.

The petitioner shall be given an opportunity to file his objection to the said report and, thereafter a hearing shall be given to all the parties including the respondent nos. 10 and 11. A reasoned order shall be passed and communicated to all concerned.

Needless to mention that on the basis of the order that is passed by the authorities upon hearing the contentions of the respective parties, the authorities shall reach the issues involved to its logical conclusion as per Section 23 of the said Act.

This order shall not be construed as an observation of the court on the merits of the order impugned or on the allegations made by the respondent nos. 10 and 11.

The order impugned is being set aside only on the ground of violation of the principles of natural justice.

The entire exercise shall be completed within a period of two months from the date of communication of this order.

The writ petition is, thus, disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)