

06.09.2022
Sl. No.11
srm

W.P.A. No. 20352 of 2022
Murari Purkait @ Murari Charan Purkait
Vs.
The State of West Bengal & ors.

Mr. Sounak Bhattacharya,
Mr. Sounak Mondal
....for the Petitioner.

Mr. Mohiur Sasmal
.....for the Respondent No.5.

Mr. Srikanta Paul,
Mr. Palash Bapari
...for the Respondent No.6.

Affidavit-of-service is taken on record.

The petitioner has challenged a notice issued by the Pradhan of Shikharbali-II Gram Panchayat, District-24-Parganas (South). The said notice has been issued by the concerned authority, asking the petitioner to demolish his structure within September 6, 2022 at his own cost, failing which steps would be taken by the appropriate authority for demolition.

According to Mr. Bhattacharya, learned Advocate appearing on behalf of the petitioner, the notice has been issued by the Pradhan, although the direction of this Court for execution of the order of demolition was upon the Sub-

Divisional Officer, Baruipur. He next submits that the order of this Court was passed on July 13, 2022 against the petitioner, although the petitioner was not notified that the matter had been upgraded and listed at the top. The contention is that the order of this court was passed *ex parte*. The petitioner urges this Court to intervene and stay the demolition proceedings on the ground that the notice of the Pradhan had given rise to a fresh cause of action and the Writ Court can interfere with the said notice and stay the coercive action proposed to be taken even if such steps were contemplated in terms of the order of this Court dated July 13, 2022 passed in WPA 13763 of 2021. Mr. Bhattacharya also submits that there is an order of *status quo* with regard to the property in question, passed by a competent civil court.

Mr. Bhattacharya urges the Court to appreciate that a writ petition being WPA 30043 of 2015 had been filed by the petitioner challenging the order of demolition passed by the Pradhan-in-Charge. Mr. Bhattacharya urges the Court to take up the hearing of the writ petition being WPA 30043 of 2015 and submits that the order of demolition suffers from various irregularities. The decision to revoke the sanction plan which had been granted in

favour of the petitioner and the consequential order of demolition, were contrary to law.

Learned Advocate for the respondent No.6 submits that the order of Her Lordship dated July 13, 2022 had attained finality. The application for recalling filed by the petitioner, was dismissed. The petitioner did not take any interest in getting the writ petition being WPA 30043 of 2015 heard for the past seven years. He refers to an information slip of Title Suit No.51 of 2021 and submits that there is no order of ad-interim injunction. It is his allegation that the ad interim order of injunction, which has been annexed to the writ petition refers to a different suit.

Learned Advocate for the respondent No.6 hands over a copy of a letter dated July 14, 2014 written by the petitioner to the Pradhan of the said gram panchayat, *inter alia*, admitting his mistake in not having applied for sanction to construct the ground floor prior to such construction, but had applied for a composite sanction for the ground floor and the first floor after the ground floor had been constructed. He further relies on the prayer of the petitioner for regularization upon payment of fine.

Learned Advocate for the respondent No.5 submits that the erstwhile gram panchayat had committed some

errors and all the documents had not been considered by the panchayat authorities when the order of demolition had been passed.

Heard the learned Advocate for the respective parties. It is a fact that the writ petition being WPA 30043 of 2015 is pending and the petitioner has challenged the right of the panchayat authorities to recall the sanction once granted. However, the notice, which has been impugned before this Court, is a consequence of the order passed by this Court asking the Sub-Divisional Officer to implement the order of demolition. It also appears that the Sub-Divisional Officer had directed the Pradhan to take steps for the purpose of implementation of the order of this Court and a copy of the said notice had also been forwarded to the petitioner. Thus, the allegation that the Sub-Divisional Officer had the jurisdiction to issue the notice and not the Pradhan, is not accepted. The Pradhan has acted in compliance of the direction of the Sub-Divisional Officer, Baruipur and has intimated the petitioner about the steps to be taken in compliance of the order of this Court.

The order of this Court dated July 13, 2022 directing the Sub-Divisional Officer, Baruipur to implement the order of demolition is unchallenged. The said order was

passed despite the Court having taken judicial notice of the pending writ petition. Unless the petitioner challenges the order of the co-ordinate Bench in an appeal, it would not be proper for this Court to modify the said order. Although, Her Lordship had directed implementation of the order of demolition unless the same was set aside or cancelled by a superior Court, the fact remains that the order of demolition has not been set aside as yet.

Under such circumstances, the Court does not find any reason to interfere with the notice impugned before the Court. However, considering the balance of convenience and/or inconvenience that may be caused to the parties, this Court is of the view that as the time period fixed by Her Lordship for completion of demolition work by the Sub-Divisional Officer expires on October 3, 2022, the demolition process, which has not been initiated by the authorities, be kept in abeyance for a period of two weeks to enable the petitioner to take his chance before the Hon'ble Division Bench.

While the respondent No.6 is the complainant who has approached the authority praying for demolition of an unauthorised construction, no serious prejudice will be caused to the said respondent if the demolition process is stayed for a period of two weeks. Some breathing time is

granted to the petitioner to approach the Hon'ble Division Bench and take his chance, precisely for the reasons that the petitioner has a right of appeal and a right to protect his property in accordance with law. Whether the property shall be ultimately protected or not, will be a decision on merits and after consideration of the entire issue.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)