

14.11.2022
Item No.6
Court No.6.
S. De

**M.A.T. 1519 of 2022
with
I.A. No. CAN/1/2022**

**Nandini Das.
Vs
The State of West Bengal & Ors.**

Mr. Satyajit Mondal,
Mr. Amar Nath Sen,
Mr. Malay Dhar,
Mr. Amit Bikram Mahata,
...for the appellan.

Mr. Anindya Bose,
Mr. Diptendu Mondal,
Mr. Mridul Biswas,
...for the respondent no.
12/Writ Petitioner.

Mr. Salil Kr. Maiti,
...for the respondent nos. 7, 8 & 11.
Mr. Malay Krishna De,
Mr. Arunava Maity,
...for the State respondents.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

A judgment and order dated June 17, 2022 whereby a contempt application being WPCRC 46 of 2022 was disposed of by the learned Single Judge, is the subject matter of challenge in this appeal.

A writ petition was filed by one Kamalesh Chandra Das (hereinafter referred to as Kamalesh), being WPA 19420 of 2018, complaining that the private respondents in the writ petition which included the husband of the present appellant, had encroached

upon the land of the writ petitioner and had raised unauthorized construction thereon without obtaining sanction from the concerned Gram Panchayat. The learned Judge disposed of the writ petition by an order dated December 11, 2018 by directing as follows :-

“In the circumstances, let the Pradhan of the concerned Gram Panchayat being respondent no.4 herein shall consider the application of the writ petitioner dated 08.03.2018 being annexure P-6 to the writ application within a period of two months from the date of communication of a copy of this order, upon due notice to the petitioner as well as the private respondents and pass a reasoned order thereon. The order that may be passed by the Pradhan shall be communicated to the parties concerned within 7 days thereof.”

Alleging wilful violation of the aforesaid order, Kamalesh filed the contempt petition mentioned above. By the order impugned, the contempt petition was disposed of, inter alia holding the Pradhan of the concerned Gram Panchayat guilty of contempt of Court and directing demolition of the house of the appellant. Being aggrieved, the appellant is before us.

Firstly, we are of the view that the order directing demolition of the appellant's house is beyond the parent order and also dehors the scope of a contempt application. Secondly, the appellant was not a party in the writ petition nor a party in the contempt application. It was not proper to direct demolition of the appellant's house without affording an opportunity of hearing to her.

Solely on the aforesaid ground of breach of the principles of natural justice, without entering into the merits of the cause, we set aside the order under appeal to the extent it directs demolition of the appellant's house.

The concerned Sub-Divisional Officer is the appropriate person as per Section 23(5) of the West Bengal Panchayat Act 1973, to consider whether or not the appellant has raised unauthorised construction. The appellant of course says that she has obtained the sanctioned plan from the Gram Panchayat. This is disputed by learned advocate for Kamalesh.

We also set aside the order of the Pradhan of the concerned Gram Panchayat since he had no jurisdiction or authority after the amendment of the West Bengal Panchayat Act 1973 to go into the question as to whether or not the appellant has made illegal construction. We direct the Pradhan of

Horekhali Gram Panchayat being the respondent no.4 herein, to refer the entire matter to the concerned Sub-Divisional Officer within a week from the date of a copy of this order being supplied to the Pradhan. The Sub-Divisional Officer shall decide whether or not the appellant had made unauthorized construction after giving an opportunity of hearing to the appellant, to Kamalesh and any other concerned person, or their authorized representatives. The Sub-Divisional Officer shall pass a reasoned order in accordance with law within eight weeks from the date of the matter being referred to him by the Pradhan of Horekhali Gram Panchayat. The Officer shall afford an opportunity of filing written representations and/or documents to all the concerned parties before taking a final decision.

We have not gone into the merits of the disputes between the parties. The concerned Sub-Divisional Officer shall take an informed decision in accordance with law without being influenced by anything in this order or in the order of the learned Single Judge which we have set aside to the extent it directed demolition of the appellant's house or the order which the Pradhan of Horekhali Gram Panchayat has recorded holding that the appellant's construction is unauthorized. The Sub-Divisional Officer shall decide the issue with a fresh mind in accordance with law.

We clarify that the order of the learned Single Judge is set aside only to the extent it directs demolition of the appellant's house and adverse observations made against the appellant shall also stand expunged.

M.A.T. 1519 of 2022 is, accordingly, disposed of along with the application being I.A. No. CAN 1 of 2022.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)