

07.11.2022
Sl. No.28(DL)
srm

W.P.A. No. 22401 of 2022
Manasa Charan Santra & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Anindya Bose,
Mr. Diptendu Mondal,
Mr. Nikhil Gupta,
Mr. Mridul Biswas

....for the Petitioners.

Ms. Sutapa Sanyal,
Mr. Anand Farmania

...for the State-respondents.

Despite service, none appears on behalf of the respondent No.4, 5 and 7. Affidavit-of-service is taken on record.

The petitioners allege that the authorities of Gangadharpur Gram Panchayat, Hooghly did not act in terms of the order passed by a co-ordinate Bench of this Court on July 28, 2020. The petitioners had filed a representation before the authorities alleging that one Keshab Chandra Santra, son of Haradhan Santra had raised an unauthorised construction on Dag No.2251 of mouza Gangadharpur. The co-ordinate Bench disposed of the writ petition by directing the authorities to consider the representation/complaint. The authority disposed of the

representation by passing a reasoned order dated September 9, 2022. Such order was passed after the contempt proceeding was initiated at the instance of the petitioners. The order was filed in court in the form of a compliance report. The contempt proceeding was dropped and the rule was discharged with the following findings:

“Compliance report is taken on record. From the compliance report I find notice was issued upon the parties including writ petitioners. They chose not to appear and participate in the proceeding. Inspection was held and it was found there is a dilapidated residential structure of one Murari Mohan Santra which had been sanctioned under PMAY(G) Scheme. No unauthorized construction was noticed. Learned lawyer for the writ petitioners submits enquiry was not made with regard to illegal construction of Keshab Chandra Santra.

I have considered the materials on record. In spite of notice, writ petitioners did not participate in the enquiry proceeding. Nothing is placed on record to contradict the findings in the enquiry report by the alleged contemnor.

Order passed by this court has been complied with.

Contempt proceeding is, accordingly, dropped.

Rule is discharged.

The petitioners submit that the authority proceeded on the basis that the allegation was against Murari Mohan Santra and not Keshab Chandra Santra. Reference has been made to the representation in support of the contention that the competent authority ought to have come to a finding whether there was any illegal construction by Keshab Chandra Santra. Hence, this writ petition has been

filed alleging non-application of mind and also with the allegation that the Pradhan had misdirected himself while coming to the conclusion that the allegation in the representation was false.

It appears from the order passed in compliance of the order of this learned co-ordinate Bench that when the authorized representative of the Gangadharpur Gram Panchayat visited the spot in question, an existing dilapidated tiled shed structure belonging to Murari Mohan Santra, son of Haradhan Santra had been found. Photographs of the site were enclosed with the report. It has also been mentioned that Murari Mohan Santra had been listed as a beneficiary under the PMAY(G) scheme and the first instalment had been sanctioned in his name. Due to pendency of the earlier writ petition, no construction under the PMAY(G) scheme had been made. Considering the report and the photographs, the learned co-ordinate Bench arrived at the specific conclusions that the writ petitioners did not participate in the enquiry and could not put anything on record to contradict the findings of the enquiry report filed by the Pradhan. The report was accepted and the allegation with regard to the illegal structure of Keshab Chandra Santra was also noticed by the co-ordinate Bench, but no order was passed. Rather,

the learned co-ordinate Bench found that the petitioners could not prove anything contrary to the findings of the panchayat authorities.

Under such circumstances, the issue raised in this writ petition is barred by principle of *res judicata*. Further, the petitioners had alleged that there was an illegal construction on Dag No.2251 of mouza Gangadharpur at the instance of Keshab Chandra Santra. The authorities found that Murari Mohan Santra, brother of Keshab Chandra Santra had a construction, which was in a dilapidated condition and Murari Mohan Santra had also been listed as a beneficiary under the PMAY(G) scheme. The issue with regard to an alleged illegal construction on Dag No.2251 was considered and the authorities came to a finding that the allegation in the representation, was false. This would imply that Keshab had not constructed on Dag No.2251. The authority found only one dilapidated structure on the said Dag and there was no illegal construction. The petitioners cannot now file another writ petition and multiply the proceedings on the ground that the authorities ought to have decided whether Keshab Chandra Santra had raised any construction. Such exercise would not be necessary in the facts of the case as the issue was whether on Dag No.2251 there was any unauthorised

construction or not by Keshab Chandra Santra. The authority found that there was a dilapidated structure belonging to Murari Mohan Santra, brother of Keshab Chandra Santra, on the said plot and the allegation was not correct.

Under such circumstances, nothing remains to be decided in the writ petition. Murari Mohan Santra will raise the construction in accordance with the model plan/sketch map supplied/approved under the PMAY(G) scheme.

It also appears that at the hearing, the petitioners were not present and they did not controvert any of the findings. No further opportunity is required to be given and the scope of the writ petition cannot be extended.

It also appears that a partition suit is pending between the parties and the observations made hereinabove shall not prejudice the suit.

Accordingly, the writ petition is dismissed.

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.)