

21-11-2022
Item No.11
Subrata
Bhattacharyya

IN THE HIGH COURT AT CALCUTTA
Constitutional writ Jurisdiction
Appellate Side

WPA No.24193 of 2022
Amal Shit & Anr.

-VS-

The State of West Bengal & Ors.

Mr. Amit Baran Dash
Ms. Ankana Sarkar ...for the petitioners

Mr. Gausul Alam
Md. Yusuf Ali ...for the State

Mr. Monoranjan Jana
Ms. Mitali Jana ...for the private respondents

Admittedly, the petitioners do not have a sanction with regard to the alleged construction. The petitioner contends that permission of the erstwhile owners of plot no.217 of Mouza Talgachhia had been taken. The respondents Nos.8 and 9 claim to have purchased the said plots of land subsequently.

The respondents No.8 and 9 moved this court by filing a writ petition being WPA No.6797 of 2021. Allegation of unauthorised construction was made. A co-ordinate Bench of this court on March 25, 2021 disposed of the writ petition by directing the Pradhan, Talgachia no.1 Gram Panchayat to consider and dispose of the petitioners' representation in accordance with law. It was further directed that in the event construction had been found to be either in violation of a sanctioned plan or without any sanction, the authorities must take steps in accordance with law.

The Pradhan of the concerned Gram Panchayat dealt with the matter and asked the petitioners to demolish the

structure.

The petitioners submit that such order could not have been passed by the concerned Pradhan, in view of section 23(5) of the West Bengal Panchayat Act, 1973.

Learned advocates for the respondents submit that the order was passed pursuant to a direction of the court and in terms of section 23(6) of the 1973 Act. The co-ordinate Bench had directed the Pradhan to take necessary steps in order to deal with the unauthorised construction. Her Lordship directed that steps must be taken by the Pradhan, in accordance with law.

The Pradhan has already taken steps and come to a finding that construction was unauthorised. Now the matter has to be referred to the Sub-Divisional Officer, Contai for necessary steps in terms of section 23(5) of the West Bengal Panchayat Act, 1973. The Sub-Divisional Officer, Contai shall grant a hearing to the parties as also to the Pradhan of the Gram Panchayat and pass necessary orders.

By the amendment in the year 2017 and insertion of section 23(5) of the 1973 Act, the Sub-Divisional Officer has been empowered to direct demolition on a reference by the gram panchayat. This court is of the view that sections 23(5) and 23(6) of the West Bengal Panchayat Act, 1973 must be harmoniously construed and the Sub-Divisional Officer being the higher authority must decide the issue finally and direct what steps shall be taken with regard to the said construction in accordance with the provisions of law. Otherwise, the amendment brought in 2017, becomes redundant.

The notice dated October 17, 2022 issued by the Talgachhia Gram Panchayat Pradhan, in so far as it relates

to the direction for demolition is therefore set aside. The other finding in the said notice are not interfered with and they shall be referred to the Sub-Divisional officer in terms of section 23(5) of the West Bengal Panchayat Act, 1973. Such reference shall be made within two weeks from communication of this order and the Sub-Divisional officer will complete the entire procedure within four weeks thereafter.

With the above observation, the writ petition is disposed of. No order as to costs.

[Shampa Sarkar, J]