

21.11.2022
Sl. No.22(DL)
srm

W.P.A. No. 24753 of 2022
Sahidul Haque Molla & Anr.
Versus
The State of West Bengal & Ors.

Md. Sarwar Jahan,
Mr. Maidul Islam Kayal,
Mr. Sumit Naskar

....for the Petitioners.

Mr. Lalit Mohan Mahata,
Mr. P.B. Mahata

...for the State-respondents.

Mr. Gourab Das

...for the Respondent No.12/Pradhan.

Mr. Sandipan Maity

...for the Respondent No.12.

Mr. Amitava Chaudhuri,
Mr. N. Roy

...for the Nadia Zilla Parishad.

Affidavit-of-service is taken on record.

The petitioners are some of the villagers who propose to move this writ petition to espouse the cause of all the persons in the locality. According to them, the construction of a room by the side of a village road at the behest of the Bara-Chandghar Gram Panchayat, District-Nadia could not be directed to be demolished by the Nadia Zilla Parishad.

Mr. Das, learned Advocate appearing on behalf of the respondent No.12/Pradhan, also submits that the

villagers and the gram panchayat together identified the spot for construction of a room. The construction did not affect the residents of the place. Rather, the said room was used for official meetings and as a venue for implementation of various schemes.

It appears that the respondent No.12 filed a writ petition before a coordinate Bench of this Court with regard to such construction. The allegation was that the said construction obstructed his ingress and egress. It was further submitted before the Court that the construction was totally unauthorised.

The allegation was with regard to the encroachment on a public road. The learned coordinate Bench directed the Nadia Zilla Parishad to take steps. The Executive Officer of the Nadia Zilla Parishad was directed to ascertain whether the construction was in violation of any sanction plan or devoid of any sanction.

The Executive Officer, Nadia Zilla Parishad passed an order directing the petitioner and some others to remove the unauthorised construction.

The said order has been challenged on the following grounds:-

- (a) That the room was constructed by the gram panchayat from their own funds.

(b) Construction by an authority did not require sanction.

(c) The construction of the respondent No.12 was unauthorised and the same was raised much later.

Some of the villagers, who were parties to the proceeding admitted that the construction was on a public road. The Executive Officer of the Nadia Zilla Parishad directed the petitioners to show-cause why the unauthorised construction should not be removed.

The learned Advocate for the Nadia Zilla Parishad submits that the Nadia Zilla Parishad was not represented before the concerned Court and as such the fact that the Nadia Zilla Parishad did not have any authority in this regard could not be pointed out.

However, as there was an order of the Court, the Zilla Parishad were bound to comply with the same.

The learned Advocate for the respondent No.12 submits that the unauthorised construction cannot be allowed to remain on a public road. He denies the allegation of the petitioners that the respondent No.12 had constructed over a pond and without any permission. However, such issue cannot be decided in this writ petition. Such issue can only be decided by the concerned

permission granting authority, by initiating appropriate proceeding as authorized by law.

It appears that the Executive Officer, Nadia Zilla Parishad was directed to consider and dispose of the representation in accordance with law. Mr. Jahan, learned Advocate appearing on behalf of the petitioners submits that when the Nadia Zilla Parishad had been directed by this Court to take necessary steps to deal with such unauthorised construction, it meant that on detection of a construction on a public road, the zilla parishad ought to have referred the matter to the appropriate authority under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 for initiation of proceedings under the said Act.

By the order impugned, the Executive Officer, Nadia Zilla Parishad, had asked the petitioners and others to show-cause why the unauthorised construction on the government land shall not be removed. Such show-cause was directed to be filed within 10 days from the date of the order. Annexure P7 is the answer to the show-cause. The same is dated October 24, 2022.

Under such circumstances, the writ petition is disposed of with a direction upon the Executive Officer, Nadia Zilla Parishad to consider Annexure P7 as the

answer to the show-cause and thereafter take steps in accordance with law.

If the authority is not satisfied with the reply to the show-cause, the matter shall be referred to the competent authority for initiation of proceedings in accordance with the provisions of the laws relating to removal of encroachment from government land/public road.

However, if the road/land had vested to the Zilla Parishad by operation of law or by a notification, in that event, the Executive Officer of the Zilla Parishad shall take steps in accordance with law.

During the pendency of the issue, demolition shall not be effected. The direction for demolition upon the Block Development Officer, Kaliganj is set aside and quashed.

All parties will be communicated the decision to be arrived at by the said respondent authority within one month from communication of this order.

This Court has not gone into the merits of the claims and counter-claims of the parties.

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.)