

S/L 47
14.12.2022
Court. No. 19
GB

W.P.A. 25294 of 2022

Sri Uttam Kayal
VS
The State of West Bengal & Ors.

*Mr. Sarbananda Sanyal,
Ms. Poulami Chakraborty.*

...for the Petitioner.

*Mr. Raja Saha,
Ms. Tanusri Chanda.*

...for the State.

*Mr. Samim Ul Bari,
Md. Hasanuz Zaman.*

...for the Respondents.

Affidavit-of-service filed in Court today, be kept with the record.

The petitioner is aggrieved by the order passed by the Pradhan, Bharatgarh Gram Panchayat, Basanti Block, 24 Parganas (South). According to the petitioner, the construction on Plot No.666 was under the PMAY(G) scheme. The petitioner claims to be in permissive possession of the said land. A certificate allegedly issued by the Block Land and Land Reforms Officer, has been relied upon.

Alleging unauthorized construction by the petitioner, the respondent no.8 had filed a writ petition before this Court. WPA 6558 of 2021 was disposed of by this Court with a direction upon the Bharatgarh Gram Panchayat to adjudicate the issue raised by the respondent no.8 as also other interested parties.

The procedure to be followed by the panchayat authorities had been specified in the order. Accordingly, the

panchayat authorities granted a hearing to the petitioner. An inspection and enquiry was made on July 13, 2022 in the presence of the parties and some villagers. The petitioner did not produce any document with regard to his interest in the said property as also with regard to any permission for raising the construction on the said plot. The panchayat authorities found that no permission had been given for erection of the structure. The petitioner was asked to demolish the structure at his own cost.

The petitioner submits that the construction was under a Poverty Alleviation Scheme and the panchayat law was not applicable. Thus, the order has been challenged before the Court on the ground of lack of jurisdiction and also on the ground of non-appreciation of facts.

Mr. Bari, learned advocate submits that the petitioner did not raise any such plea with regard to the construction being under the PMAY(G) scheme.

Admittedly, proviso to Rule 19 of the West Bengal Panchayat (Gram Panchayat and Administration) Rules, 2004 exempts construction under a Poverty Alleviation Scheme. However, as per the scheme, construction could only be made upon fulfillment of certain parameters and criteria.

There is nothing on record for this Court to accept the contention of the petitioner that the construction had been made under the PMAY(G) scheme. The bank statements would reflect whether instalments were received under such scheme. Such statements have not been annexed to the writ

petition. The petitioner has not been able to file any document to indicate that such plea had been taken before the Pradhan.

The Pradhan has acted on the basis of the order passed by this Court and has come to a conclusion that there was no permission for the alleged construction.

The Pradhan cannot demolish the structure, but has to refer the matter to the Sub-Divisional Officer under Section 23(5) of the West Bengal Panchayat Act, 1973. All the documents shall be referred to the Sub-Divisional Officer for a decision within a period of two weeks from date of communication of this order and the Sub-Divisional Officer shall decide the issue within two months thereafter. The Sub-Divisional Officer shall permit the petitioner to submit his written statement with all his documents to prove that he had constructed the aforementioned structure under the PMAY(G) scheme as per the approval of the competent authority. If such contention of the petitioner is found to be correct, in that event no steps shall be taken in respect of the said construction. However, if it is found that the construction was not under the scheme, then the Sub-Divisional Officer shall act and proceed in accordance with law. Upon conclusion of the hearing to be afforded to all parties, a reasoned order will be passed and communicated to all parties.

The issues of right, title, possession shall not be gone into by the Sub-Divisional Officer. The only issue to be decided would be whether the petitioner had valid

documents to show that the construction was permitted under the PMAY(G) scheme and if not, whether the construction was in accordance with the provisions of the Panchayat Act.

If it is found that the construction was under the scheme, this order would not prevent the respondent no.8 from approaching the appropriate authority, challenging the grant of sanction or benefit to the petitioner under the PMAY(G) scheme.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)