

S/L 2
22.11.2022
Court. No. 19
GB

W.P.A. 25329 of 2022

Prakash Chandra Maity & Anr.
VS
The State of West Bengal & Ors.

*Mr. Anjan Bhattacharya,
Mr. Sunny Nandy,
Mr. Abdullah Bin Masi,
Mr. Rajnish Kr. Kalawat.*

...for the Petitioners.

*Mr. Manoranjan Jana,
Ms. Mitali Jana.*

...for the Respondent No.6.

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

The petitioners have challenged the order passed by the Pradhan, Talgachhari-I Gram Panchayat dated November 3, 2022.

The petitioners' construction was found to be illegal and without any permission. The specific case of the Pradhan was that the permission for construction had never been granted by the concerned gram panchayat. The petitioners were asked to demolish their structure, failing which the authority reserved the right to proceed in accordance with law. Such order was passed pursuant to a direction of a coordinate Bench of this Court dated June 6, 2022, passed in WPA 18062 of 2019.

The order records that the Executive Engineer of the concerned gram panchayat had intimated the respondent no.6 that no records were available with regard to the grant of sanction in respect of the construction of the petitioners.

The respondent no.6 had filed the earlier writ petition for a direction upon the gram panchayat to take steps against the alleged illegal construction of the petitioners.

Mr. Bhattacharya, learned advocate appearing on behalf of the petitioners assails the order passed by the authority on the following grounds:-

- a) The Pradhan did not have the power to order demolition.
- b) The documents which were placed at the hearing, namely, the permission for the construction, the receipt showing deposit of money for such permission as also the plan, were not considered by the authority.
- c) The petitioners had the permission to construct both on plot nos.2 and 3.

The aforementioned documents have been annexed to the writ petition as well. However, the truth and veracity of the same cannot be decided in this proceeding. The panchayat authorities stated that no permission had been granted. There are disputed question of facts.

In any event, the matter has to be referred to the Sub-Divisional Officer, Contai under Section 23(5) of the West Bengal Panchayat Act, 1973 for further steps on the basis of the reference/finding of the panchayat authority. Before such decision is finally taken by the Sub-Divisional Officer, a hearing is to be given to all the parties.

Thus, this writ petition is disposed of with a direction upon the Talgachhari-I Gram Panchayat to refer the matter

with all relevant documents to the Sub-Divisional Officer, Contai. The Sub-Divisional Officer, Contai shall grant a hearing to all the parties as also the panchayat authorities and thereafter pass necessary orders.

At the hearing, the petitioners shall be entitled to place their case and their supporting documents. The issues raised by the petitioners shall be decided by the authority and thereafter a reasoned order shall be passed. If the authority is also in agreement with the gram panchayat that no plan or permission had been sanctioned in respect of the alleged construction on plot nos.2 and 3 of Mouza-Ramnagar, necessary orders shall be passed for demolition. Preceding such hearing, the Sub-Divisional Officer may also cause a physical inspection in the presence of all the parties including the gram panchayat authorities.

The reference shall be made by the concerned Gram Panchayat within a period of two weeks from date of communication of this order. The Sub-Divisional Officer shall complete the proceeding within six weeks thereafter.

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.)