

1.2.2023
Ct.19/sl.8
sn

WPA 404 of 2023

Huzaifa Vadnagarwala
Vs.
The State of West Bengal & Ors.

Mr. Mainak Ganguly
Mr. Dhiraj Kumar Gupta
Mr. Abhishek Singh
Mr. Swarup Saha
...for the petitioner
Mr. Amal Sen
Mr. Jaladhi Das
..for the State
Mr. Sharanya Chatterjee
..for the respdts.3&4
Mr. Tarun Das Sarma
Ms. Piyali Mukherjee
..for the respdts.5-7

Upon perusal of the order dated December 12, 2022, which is Annexure P5 at page 26 of the writ petition, this Court is of the view that the Pradhan, Kheadaha-II Gram Panchayat could not have directed the persons responsible for such construction including the petitioner, to effect self demolition. Further, the authority could not have reserved the right to demolish the structure in case of failure by the said persons to effect demolition.

Mr. Ganguly, learned advocate for the petitioner raises the following points:-

- A) LR dag nos. 28 and 30 of mouza Jagatipota corresponding to dag no. 9/65 is a vacant land.

- B) No construction has ever been raised on the said plots. No inspection was held by the panchayat authorities.
- C) The Pradhan did not have any jurisdiction to pass the order of demolition.
- D) No hearing was given to the petitioner.
- E) On the basis of an erroneous finding, the chances of the petitioner to use the said land for building and/or rebuilding in future, would be jeopardized.
- F) There was no finding as to who was responsible for the alleged construction;

Learned advocate for the respondent nos.5 to 7 submits that unauthorized constructions had been made on LR dag nos. 28 and 30, of which the said respondents are the owners.

Mr. Sen, learned Additional Government Pleader submits that if the petitioner's contention is correct, in that event, the order could not be implemented.

Mr. Chatterjee, learned advocate for the panchayat authorities submits that the order was passed by the Pradhan mistakenly. Upon coming to the finding of unauthorized construction, the documents should have been forwarded to the

concerned Sub Divisional Officer for necessary action under the West Bengal Panchayat Act, 1973.

Heard the parties. The question of possession, ownership and title in respect of LR plot nos. 28 and 30 are not required to be gone into.

The only issue to be decided here is whether there has been any construction on the said plots, without permission/sanction. The decision of the Pradhan shall be treated as a finding with regard to the unauthorized construction on the aforementioned plots.

The final decision in this regard shall be taken by the concerned Sub-Divisional Officer, in accordance with Section 23(5) of the West Bengal Panchayat Act, 1973. The provision mandates that the persons who are responsible for such construction or likely to be affected by the order, must be heard.

In the opinion of the Court, Mr. Ganguly's client and all other parties interested in the proceeding must be given an opportunity of hearing by the concerned Sub Divisional Officer.

The points raised by the petitioner with regard to non-service of notice, absence of proper enquiry by the panchayat authorities, collusion with the respondent nos. 5 to 7 shall be raised before the Sub Divisional Officer.

The Sub Divisional Officer shall deal with each and every contention of the parties and if the authority deems it fit, may cause an inspection through his authorized representative to ascertain whether any construction exists on plot Nos 28 and 30.

On completion of the inspection and hearing, a reasoned order shall be passed and communicated to all. If unauthorized construction is found, steps shall be taken in accordance with Section 23(5) of the West Bengal Panchayt Act, 1973.

This Court has not gone into the merits of claims and counter claims of the parties. All the parties are at liberty to place their respective case before the authority and the authority will hear the matter independently.

The interim order stands vacated with the disposal of the writ petition. The portion of the order of the Pradhan directing demolition, is set aside.

The entire exercise shall be completed within a period of three months from the date of communication of this order.

This writ petition is disposed of.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)