

06.02.2023
Court No. 19
Item No.25
CP

WPA No. 1335 of 2023

Bidhan Chandra Mondal
Vs.
The State of West Bengal & Ors.

Mr. Shyama Prasad Purkait
Ms. Moumita Mondal

....for the petitioner.

Ms. Jayeeta Sinha
Mr. Sandip Mandal

...for the State.

Mr. Mukteswar Maity
Ms. Manika Sarkar

...for the respondent no. 10.

The order dated September 8, 2022 passed by the Sub-Divisional Magistrate, Alipore (Sadar), South 24 – Parganas is misconceived. The same is not an order under Section 23(5) of the West Bengal Panchayat Act, 1973.

The Sub-Divisional Officer, Alipore (Sadar) was required to decide the issue in accordance with the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as ‘the said Act’) and pass necessary orders upon hearing the persons responsible for such unauthorized construction. Instead of doing so, the Sub-Divisional Officer acting in the capacity of the Sub-Divisional Magistrate asked the panchayat authorities to decide the issue which was completely *de hors* to the provisions of Section 23(5) of the said Act.

The panchayat authorities did not have any power to direct demolition. Hence, the order dated September 8, 2022 passed by the Sub-Divisional Magistrate and the order dated January 2, 2023 passed by the pradhan are set aside and quashed.

The panchayat authorities shall make an inspection in the presence of the petitioner and the respondent no. 10 within 10 days. The parties shall be called for a hearing. Thereafter, a reasoned order shall be passed upon hearing the parties. The order shall be communicated to the parties.

If it is found that the construction is unauthorized or illegal, all the documents along with the order shall be forwarded to the Sub-Divisional Officer, South 24 Parganas, within three weeks from completion of the inspection. The Sub-Divisional Officer thereafter shall act and proceed in accordance with law upon granting a hearing to the persons responsible for unauthorized construction.

A reasoned order shall be passed by the authority and the consequences shall follow. If the construction is unauthorized the same shall be demolished in accordance with law.

The entire exercise shall be completed within a period of one month from the date of receipt of the documents from the panchayat office.

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.)