

28.2.2023  
Ct.19/sl.8  
sn

**W.P.A. 2524 of 2023**

**Sachin Naskar & Ors.**

**Vs.**

**The State of West Bengal & Ors.**

Mr. Jaharlal Roy

Ms. Kabita Rani

...for the Petitioners

Mr. Wasim Ahmed

Mr. Sk. Md. Mamud

..for the State

Mr. Indranath Mukherjee

Mr. Jayanta Banerjee

Mr. Sandip Bandopadhyay

..for the respondent nos.5&6

The petitioners seek implementation of the order of the Pradhan of Basanti Gram Panchayat dated November 9, 2022. According to the petitioners, steps must be taken for demolition of structures on plot no. 37 of mouza Basanti.

The petitioners had alleged that unauthorized constructions had been made on plot nos. 36 and 37 by the respondent nos.5&6.

A writ petition had been filed with such allegation.

This Court had disposed of the writ petition directing the Gram Panchayat to act and proceed in accordance with law and take a decision as to whether any construction had been raised either without any approved plan or in deviation thereof. The said order was passed in the absence of the

respondent nos. 5&6. The said respondents preferred an appeal. The appeal was disposed of with leave to the said respondents to file an application for recalling. Such application was allowed and the order of the Court dated February 27, 2019 was modified. The final order passed by this Court dated April 7, 2022 is quoted below :-

**“It is directed that, as the gram panchayat is the permission granting authority, all steps must be taken by the said gram panchayat in terms of Section 23 of the West Bengal Panchayat Act, 1973. While doing so, the following procedure shall be adopted:-**

**a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos.4 and 5. Advance notice of the inspection shall be served upon the petitioner and the respondent nos.4 and 5. If the parties are not available to accept notice, the authorities shall affix the notices of hearing and inspection at conspicuous places in their respective premises.**

**b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and was continuing, the authorities may take such interim measures by stopping such construction.**

**c) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.**

**d) Such report shall be handed over to the parties.**

**e) A hearing shall be given to the petitioner and the respondent nos. 4 and 5. The applicants and also their mother, who are claiming to be the beneficiaries of the housing scheme shall be entitled to produce all documents in support of such contentions before the competent authority. All documents relied upon by the respective parties, shall be exchanged.**

**f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during**

**inspection, the proceedings shall be reached to its logical conclusion in terms of the statute.**

**The court has not gone into the merits of the claims and counter-claims of the parties and the issues involved shall be decided independently.**

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

**Accordingly, the writ petition is disposed of. However, there will be no order as to costs."**

The learned advocate for the respondent nos. 5&6 submits that the panchayat authorities did not have any right to decide the title in respect of the plot no. 37. This Court had specifically debarred the panchayat authorities from deciding the question of title. That the authorities ignored all the documents that were produced by the respondent nos. 5&6. The conclusion that there was an unauthorized construction on plot no.37 was erroneous. The list of beneficiaries under the Indira Gandhi Aayas Yojona and bank details had been supplied to the panchayat authorities in support of their contention that the construction of the said respondents was under a particular housing scheme.

Having heard the learned advocates for the respective parties, this Court comes to the following conclusion.

A) The question of title over the plot no. 37 is not relevant for the purpose of disposal of the issue. The finding of title by the

panchayat authorities shall not be relied upon as such issue has to be decided by a civil court.

B) If any unauthorized construction has been found either on plot no. 37 or on any other plot, the competent authority under the Panchayat Act, has the duty to act and proceed in accordance with law under Section 23(5) of the West Bengal Panchayat Act, 1973.

C) The finding of the gram panchayat that the construction on plot no. 37 was not under any scheme is a factual finding and the respondent nos. 5&6 could not prove that the construction on plot no.37, had been made under any scheme.

The preliminary observations of the panchayat authorities is required to be sent to the Sub Divisional Officer in terms of Section 23(5) of the West Bengal Panchayat Act, 1973. The petitioners will be at liberty to produce adequate documents before the concerned Sub Divisional Officer in support of the construction on plot no. 37.

This writ petition is disposed of with a direction upon the Pradhan of Basanti Gram Panchayat to transmit all the records to the concerned Sub

Divisional Officer within a period of two weeks from the date of communication of this order.

The Sub Divisional Officer, Canning shall comply with the process in terms of Section 23(5) of the West Bengal Panchayat Act, 1973 after affording an opportunity of hearing to the parties and after perusing the documents filed by the parties. Necessary steps shall be taken if any.

The Pradhan shall also supply the order dated November 9, 2022 to the respondent nos. 5&6.

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.)**