

14.07.2023
Item No. 04
BR

WPA 1600 of 2018

Gobinda Chandra Mondal & Ors.

-vs

State of West Bengal & Ors.

Md. Zeeshanuz Zaman

.... For the petitioners

Mr. Biswarup Biswas,

Mr. Chandranath Karmakar.

..... for the respondent no. 9

Petitioners are agitating construction under the “Indira Awas Yojana”, that is, a poverty alleviation programme of the Central Government, over the land, which the petitioners claim to belong to them, as declared vide a decree of a competent Court. They have challenged disbursement of monitory benefit by the respondent authority, in favour of the respondent no. 9, for construction of house under the said scheme and also say that necessary permission could not have been granted to the said respondent for construction of house over the land, he being not a owner thereof. Learned Advocate on behalf of the petitioner submits his clients not to have any grievance, so far as the respondent no. 10 is

concerned. He has also pointed out to Annexure-P-8 of the writ petition, to submit that the representation made by him before the panchayat authority is yet not been considered and disposed of, by it.

Learned advocate appearing on behalf of the respondent no.9 has raised strong objections as to the contentions and prayer made by the petitioners, on the ground specifically that the concerned statute, that is, West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 as amended, does not mandate for any permission of Gram Panchayat in case of construction of house under the poverty alleviation programme.

So far as the point regarding title is concerned, he emphatically submits, upon reliance to the order of the Co-ordinate Bench of this Court as well as of the Hon'ble Supreme Court of India, that the said question falls only within the domain of the Civil Court to decide and either the writ Court or the Panchayat authorities would not have any jurisdiction to deal with the said question regarding the title of the parties, over the land

in question. He says that the writ petition may be dismissed being devoid of merits.

The said law is well settled and cannot be disputed. So far as the question of title of any immovable property is concerned, a Civil Court of competent jurisdiction, would decide the said question on merit, upon considering the evidence on record.

Petitioners have been declared, vide a decree of declaration by a competent Court of law, as the owner of the property in question and are in possession thereof. This fact is unchallenged.

So far as, advancement of the benefit of any poverty alleviation scheme to any person is concerned, the respective competent authority has to satisfy itself and ascertain regarding the ownership of the person as regards the piece of property where the construction is proposed, along with the other factors like if or not the person belongs to below poverty line or has any alternative arrangement to accommodate himself etc.

Pradhan of the Panchayat is unrepresented in this case. The question of obtaining sanction of the Panchayat would not

be relevant, in this case in view of the amended provision of Rule 19 (5) (1) proviso of the West Bengal Panchayat (Gram Panchayat Administration Rules), 2004. The same may be extracted for more clarity.

“Provided that no permission of the Gram Paschayat shall be required for construction of houses under poverty alleviation programme.”

In this case, there is nothing on record to find that the benefit as above has been advanced to the respondent no. 9, on the objective considerations, based on adequate records. There is nothing on record, to show that the Pradhan has taken into consideration all the relevant and necessary factors and satisfied himself about the beneficiary to have met all the necessary criteria, on the basis of appropriate and adequate document/s. Hence, inference shall be in negative, as to whether the benefit as aforestated, has been extended upon fulfillment of all the necessary factors and criterion.

With the findings as above, it will be proper that the respondent no. 7 be directed to consider the petitioners representation dated February 11, 2017, (Annexure – P 8) within a

period of six weeks from the date of this order, by affording opportunity of hearing to all the concerned parties and deliver a reasoned order as to the applicability of the scheme, on the basis of adequate and proper considerations. Needless to mention that in doing so, he shall not traverse through the question of determination of title, being dehors of any power with regard to the same, but shall only, if necessary, rely on the documents made available to him, to find out about applicability of the scheme, upon fulfillment of necessary criteria.

With these directions, this writ petition is allowed and disposed of along with the application/s, if any, pending.

(Rai Chattopadhyay, J.)