

24.03.2023
Court No. 19
Item no.87
CP

WPA No. 4352 of 2023

Tapan Barik
Vs.
The State of West Bengal & Ors.

Mr. Dilip Kumar Sinha

.....for the petitioner.

Mrs. Rupsha Chakraborty

.....for the State.

Affidavit of service is taken on record.

Despite service, none appears on behalf of the respondent no. 7.

The respondent no. 7 has refused service. The postal article with the endorsement 'Refused' has been filed before the court. The same is taken on record. Refusal is good service.

The instruction given by the Sub-Divisional Officer, Ghatal, Paschim Medinipur to the learned advocate for the State respondents seems to be contrary to the records. The Dudhkomara Gram Panchayat by a letter dated July 27, 2022 communicated the decision of the gram panchayat with regard to the unauthorised construction. The said letter is on record and is a part of the writ petition.

The provisions of Section 23(5) of the West Bengal Panchayat act, 1973 casts a duty upon the Sub-Divisional Officer to act and proceed on the basis of the findings of the gram panchayat, with regard to an unauthorised construction.

The law provides that once the gram panchayat is of the opinion that an unauthorised construction had taken place, the report along with all the documents shall be forwarded to the Sub-Divisional Officer for further action. Thereafter, the Sub-Divisional Officer shall give further hearing to the persons responsible for such unauthorised construction and then pass necessary orders upon arriving at a conclusion as to the nature of the construction.

The direction for demolition is to be issued by the Sub-Divisional Officer, in case the constructions are found to be unauthorised and if the constructions are found to be in order, necessary orders are to be passed accordingly. The execution of the order may be done by the panchayat on the direction of the Sub-Divisional Officer.

In this case, the pradhan has already passed an order, inter alia, finding that the construction was unauthorised.

Under such circumstances, the writ petition is disposed of with a direction upon the Sub-Divisional

Officer to ensure compliance of the order of this court in accordance with Section 23(5) of the West Bengal Panchayat act, 1973, on the basis of the records available in the panchayat office, in case his own office has misplaced those documents. The papers annexed to the writ petition also contain the relevant documents.

A copy of the writ petition along with the server copy of this order be served upon the gram panchayat as also upon the Sub-Divisional Officer, Ghatal, Paschim Medinipur.

The entire action shall be taken by the Sub-Divisional Officer within a period of two months from the date of communication of this order.

This court has not gone into the merits of the issue involved and the Sub-Divisional Officer shall act independently, in order to come to a finding as to whether the alleged construction is either unauthorised or contrary to the rules.

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.)