

03.04.2023
Ct.19/sl.34
sn

W.P.A.5730 of 2023

Rabiya Gazi

Vs.

The State of West Bengal & Ors.

Mr. Dhiman Ray

Mr. Dip Chanda

..for the petitioner

Mr. Biswaroop Biswas

Mr. Gora Chand Samanta

..for the respdt.6

Mr. Raja Saha

Mr. Amit Kr. Ghosh

..for the State

The issue is whether the Sub Divisional Officer, Canning, can proceed on the basis of the decision of the gram panchayat without hearing the contentions of the petitioner.

Mr. Biswas, learned advocate for the respondent no.6 submits that pursuant to an order of this Court, the panchayat authorities had enquired into the matter upon notice to all including the petitioner and had submitted a report before the Sub Divisional Officer, Canning. According to Mr. Biswas, no further enquiry would be necessary.

Learned advocate for the petitioner submits that an opportunity should have been given to the petitioner to appear before the gram panchayat. The result would be otherwise had the authority considered all the documents available with the petitioner in support of such construction.

Section 23(5) of the West Bengal Panchayat Act, 1973 provides that before the Sub-Divisional Officer, Canning, decides on the issue of demolition of unauthorized structures on the basis of the opinion of the gram panchayat, a hearing should be given to the persons affected. The matter is already pending before the Sub Divisional Officer, Canning pursuant to the direction of this Court passed in a contempt proceeding. Law provides that the Sub Divisional Officer should hear the petitioner.

This court is of the view that no useful purpose would be served by keeping the writ petition pending.

An opportunity of hearing shall be given to the petitioner by the Sub-Divisional Officer. The petitioner is entitled to place all the records and documents before the concerned authority in support of his contentions. The respondent no.6 shall also be given an opportunity to deal with those documents to be relied on by the petitioner. If further enquiry is required on perusal of the documents, the same shall be made in presence of both the parties. The presence of the Pradhan would be necessary in this case at the time of hearing and at the time of further enquiry.

Once the entire exercise is completed by the Sub Divisional Officer, Canning, necessary orders

shall be passed in accordance with law and communicated to all. Steps shall be taken on the basis of the hearing to be given to the parties as also on the basis of the documents available with the petitioner in support of his contention that the construction was exempted from the applicability of the West Bengal Panchayat Act, 1973 as the same was constructed under the Pradhan Mantri Awas Yojana.

Till the decision is arrived at, no coercive steps shall be taken.

Since no affidavit-in-opposition has been called for, the allegations made in this writ petition against the respondents, are deemed to be denied.

The entire exercise shall be completed within a period of two months from the date of receipt of the petitioner's objection.

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.)