

13. 18.05.2023
Court No.6
Tanmoy Ghosh

MAT 467 of 2023

**Sk Ushiar Rahaman @ Sk Usair Rahaman
-Versus-
The State of West Bengal & Ors.**

**With
IA No: CAN/2/2023**

Mr. Ratul Biswas, Adv.,
Mr. Kaushik Chowdhury, Adv.,
Ms. Soumoyadipa Kanu, Adv.

...for the appellant.

Mr. Srinath Singha Roy, Adv.

...for the State.

Mr. Bhaskar Chandra Manna, Adv.

...for the respondent nos.11-12/
writ petitioners.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

A judgment and order dated February 17, 2020, whereby the writ petition of the respondent nos.11 and 12 herein, being W.P. 15046(W) of 2019, was disposed of, is under challenge in this appeal at the instance of the respondent no.12 in the writ petition.

The writ petitioners approached the learned Single Judge with the grievance that the present appellant had encroached on the land of the writ petitioners and had made unauthorized construction thereon.

It appears that a report had been called for from the concerned Block Land and Land Reforms Officer

(BL&LRO) which was filed before the learned Single Judge. The learned Single Judge disposed of the writ petition by passing the following order:-

“Mr. Manna, learned advocate appears on behalf of the petitioners and submits, there has been encroachment upon his clients’ property, by respondent no.12. Mr. Singh Roy, learned advocate appears on behalf of the State and hands up his instructions dated 15th January, 2020, enclosing a map, in which some encroachment is reported. Ms. Roy, learned advocate appears on behalf of respondent no. 12 and prays for adjournment.

Respondent no. 7 is directed to initiate appropriate proceeding for removal of the encroachment, detected by Block Land and Land Reforms Officer. Mr. Singh Roy has made over copy of enquiry report sent under cover of said memo dated 15th January, 2020, to Ms. Roy. Petitioners will serve this order along with the enquiry report upon respondent no. 7. Said respondent will comply within six weeks from date of communication of this order.”

Being aggrieved, the respondent no.12 in the writ petition has come up by way of the present appeal.

We have heard learned Counsel for the parties at length. Whether or not the present appellant has encroached on the land of the writ petitioners can only be decided by a competent civil forum and neither by the *Panchayat*, nor by anybody else in the Administration. Hence, we grant liberty to the writ petitioners to approach the competent civil forum for ventilating their grievance regarding encroachment on their land by the present appellant.

Insofar as the allegation of unauthorized construction is concerned, the concerned *Panchayat Pradhan* being the respondent no.7 in this appeal, is

directed to consider the grievance of the writ petitioners to the effect that the appellant herein has made construction without obtaining requisite sanction. The *Pradhan* shall afford opportunity of hearing to all concerned parties before coming to a decision in terms of the Scheme of Section 23 of the West Bengal *Panchayat* Act, 1973. Let the exercise be completed by the *Pradhan* within three (3) months from the date of communication of this order to him.

The order under appeal thus stands set aside.

The appeal being MAT 467 of 2023 and the connected application being IA No: CAN/2/2023 are disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)