

13.09.2023
Item No.04
Court No.6.
S. De

M.A.T. 634 of 2023
with
I.A. No. CAN/1/2023
Swapn Kumar Singh & Anr.
Vs.
Sachin Naskar & Ors.

Mr. Indranath Mukherjee,
Mr. Jayanta Banerjee,
Ms. Rukmini Basu Roy,
...for the appellants.

Mr. Jaharlal Roy,
...for the respondents/writ petitioners.

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

Read order dated September 1, 2023.

We had directed the Sub-Divisional Officer, Canning, being the respondent no.13 to submit before us a report concerning the dispute indicated in the order dated September 1, 2023. We had also indicated the specific points that were to be addressed by the Sub-Divisional Officer in his report. The order was duly communicated by learned advocates for the respondents/writ petitioners and the appellants to the Sub-Divisional Officer. However, nobody appears for the State today. The Sub-Divisional Officer has not filed any report before us as he was called upon to do. This is most unfortunate.

However, learned advocate for the appellants has handed up copies of order-sheets recorded by the Sub-Divisional Officer, Canning Sub-Division in proceedings initiated in terms of the learned Single Judge's order. Let the same be kept with the records. The final order was recorded on August 25, 2023. The relevant portion of the order reads as follows :

“All the documents are examined.

The house was constructed under Indra Awas Yojana Scheme, which was a poverty alleviation programme of the Government.

*As per Section 23(1) of the West Bengal Panchayat Act, 1973 read with rule 19(1) of the West Bengal Gram Panchayat Administration Rule-2004 (amend-2006), no such permission is required for construction of building under any Poverty Alleviation Scheme. In this context, **the structure cannot be labeled as unauthorized.***

But, logically such structure or construction should be erected at beneficiary's own land.

Taking into consideration all documents as submitted by both parties, enquiry reports, the order of the Hon'ble Calcutta High Court and in purview of the Section 23 of the West Bengal Panchayat Act, 1973 the case is disposed off with the following order :

- 1. The case is dropped as the construction is exempted from the applicability of section 23(6) of the West Bengal Panchayat Act 1973.**

2. The issues of right, title, possession are not taken into consideration by the undersigned.

3. The petitioner of WPA No.2524/2023 may approach in appropriate forum for challenging the right, title and possession of the land.”

In view of the aforesaid, the grievance of the respondents/writ petitioners appears to be without substance.

Learned advocate for the respondents/writ petitioners seeks liberty to challenge the aforesaid order of the Sub-Divisional Officer, Canning. The respondents/writ petitioners always have such liberty since the same would furnish a fresh cause of action to them. They can, therefore, if so advised, challenge the aforesaid order of the Sub-Divisional Officer, Canning before the appropriate forum in accordance with law.

MAT 634 of 2023 is, accordingly, disposed of along with the application being I.A. No. CAN 1 of 2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)