

19.05.2023
Court No. 19
Item 03
SRM/CP

W.P.A. No. 12463 of 2023
Feedatives Pharma Private Limited & ors.
Vs.
The State of West Bengal & Ors.

Mr. Abhrajit Mitra, Sr. Advocate
Ms. Manju Bhuteria
Ms. Raishree Kajaria
Mr. Uttam Sharma
Ms. Arundhati Barman Roy
Ms. Vrinda Kedia

....for the Petitioners.

Mr. Rupak Ghosh
Mr. Prantik Garai

....for the State.

Mr. Gaganjyot Singh
Mr. Biswajit Mal
Mr. Abhishek Bagal

.....for the respondent nos. 6 to 9.

The petitioners have alleged that the Pradhan of the Chhandar Gram Panchayat has passed the order dated May 8, 2023 in total non-application of mind and without considering the submissions made by the petitioners. By filing a representation, before the hearing had taken place, the petitioners brought certain facts to the knowledge of the panchayat authorities. The petitioners urged that they had already donated a portion of their land own for construction of a village road in lieu of the earlier

existing road which ran through the middle of the poultry farm.

It appears to the Court that there is a dispute as to whether the internal road which bifurcates the poultry farm, had continued to be used as a village road or whether the petitioners-company and/or the erstwhile management had handed over some land for construction of a road. The present petitioners acquired ownership of the poultry farm on the basis of a proceeding under the Insolvency and Bankruptcy Code, 2016.

Mr. Mitra, learned Senior Advocate submits that an arrangement had been made between the erstwhile management of the company with the villagers and the panchayat authorities that in exchange of the internal village road which had been in existence long back, another portion of the land of the company would be allotted to the gram panchayat voluntarily. The land was at the periphery of the property of the company. The internal road which had been used by the villagers was planned to be retained as a part of the entire property owned by the said poultry farm and protected from public use.

It is submitted that the company accordingly abided by the amicable settlement and allegedly handed over approximately 90 decimals of land to the gram panchayat for construction of the road.

It is further submitted that the road is in existence and is being used by the local people since then.

The order impugned which is annexure P15 at page 105 of the writ petition, is a result of a direction of this Court passed in WPA 11141 of 2021 and a further order passed in a contempt proceeding.

The learned Advocate, who appears on behalf of the respondent nos. 6 to 9 denies the contentions of Mr. Mitra and submits that the record of rights would indicate that the subject road had been recorded as a '*rasta*' and was continuously used by the villagers, till the petitioners blocked the same. The company, upon coming into possession of the poultry farm had blocked the road. Hence, the writ petition was filed for a direction upon the panchayat authorities to exercise jurisdiction under Section 25(2) of the West Bengal Panchayat Act, 1973, for removal of such encroachment.

The writ petition was disposed of by this Court, directing the gram panchayat to take steps strictly in accordance with law, upon holding an inspection and upon granting an opportunity of being heard to all the interested parties. In the event, the gram panchayat arrived at the conclusion that there was an encroachment on a village road, controlled and

managed by the gram panchayat, steps were directed to be taken to remove such encroachment.

Alleging non-compliance of the order, the respondent Nos.6 to 9 filed a contempt application. In the contempt application, the court had directed the Pradhan to take steps in compliance of the earlier order passed, including steps for removal.

The court does not accept the contention of Mr. Singh, learned advocate for the respondent nos. 6 to 9, that once the order in contempt had been passed, the order of the Pradhan was immune from any challenge. An order in contempt is to ensure compliance of the order. At best, the order passed by the Pradhan is a compliance of the order of this court, but the correctness of the order can always be challenged by an aggrieved party, in a proper proceeding. Thus, the maintainability of the writ petition is not in doubt.

Discussion of the background of the case which led to the impugned order is necessary for disposal of the writ petition.

The respondent nos. 6 to 9, had filed a writ petition being WPA No. 11141 of 2021 alleging inaction on the part of the authorities of Chhandar Gram Panchayat in disposing of the representation dated January 18, 2021. Allegation was that the poultry farm belonging to the petitioners was

encroaching a panchayat road and was also polluting the area. Learned advocate who appeared on behalf of the petitioners in the said proceeding denied the allegation and submitted that the issue of pollution was already sub judice before the National Green Tribunal and the writ court did not have any jurisdiction to decide the same. It was further submitted that the allegation that the poultry farm had encroached the panchayat road was not backed by any evidence.

The writ petition was disposed of with a direction upon the panchayat authorities to decide the representation made by the respondent nos. 6 to 9 dated January 18, 2021. The panchayat authorities were directed to call for the mouza map and the records from the office of the Block Land & Land Reforms Officer to ascertain the ownership of the road in question. The representation was directed to be disposed of within a limited period of 12 weeks and the Block Land & Land Reforms Office was directed to assist the panchayat authorities for demarcation of the road.

From the order impugned, it does not appear to the court that the exercise as directed by the court had been completed by the panchayat authorities. Even if an inspection was held in the presence of the parties, such fact is not reflected in the order

impugned. Moreover, the petitioners had filed a written representation with a specific case about a settlement with the panchayat authorities and the villagers, to the effect that the internal road which was being used by the villagers since long, would be retained by the company and an alternative land would be given to the gram panchayat for construction of a road for the benefit of the villagers.

It is submitted that the company had fulfilled its obligation under such agreement and had given approximately 90 decimals of land from its own possession, to the gram panchayat. Photographs have been submitted which indicate that the road is operational and free from all encumbrances.

It is submitted by Mr. Singh, learned advocate for the respondent nos. 6 to 9, that the petitioners did not part with the land belonging to the said petitioners, but had handed over forest land.

In any event, the correctness of the contentions of the parties cannot be gone into by the writ court at this stage. The writ court cannot ascertain whether the internal road had been retained by the petitioners in lieu of some other land. These aspects should have been gone into by the panchayat authorities at the time of passing the order. The order impugned is devoid of any reason and appears to have been passed at the suggestion of the Block

Land & Land Reforms Officer. The petitioners were asked to remove the blockade.

The competent authority to remove an encroachment from a road in terms of Section 25(2) of the West Bengal Panchayat Act, 1973, would be the gram panchayat. The court had directed the gram panchayat to take a decision in terms of the said provision of law. Whereas, the order impugned indicates that as advised by the Block Land & Land Reforms Officer, the panchayat authorities decided the allegation of encroachment of the road, on the advice of the Block Land & Land Reforms Officer and opined that the same should be kept as a village road.

There was no scope for any advice from any authority. The issue for determination was the actual position of the road, the description of the road in the record of rights, the reflection of the subject road in the mouza map and the ownership of the said road. Further, when the petitioners had submitted before the authority by filing an application that the said road was to be retained by the petitioners in exchange of some other land which could be used as a village road, the said aspect ought to have been considered.

The court is of the view that if an agreement of such nature had taken place, there must be some

kind of record of the same in the possession of the petitioners and the gram panchayat. The local villagers should also be aware of such fact. The petitioners have also relied on some documents which indicate that majority of the villagers have supported the contention of the petitioners. Mr. Singh also submits that Dag Nos. 210 and 213 bifurcates the poultry farm into two portions and the said plots had been recorded as a 'Rasta' since long.

Mr. Singh submits that most of the villagers do not live in the locality. Yet, the version of only three persons from the locality against other villagers, is also a matter which has to be decided by the authority while deciding the dispute.

The order impugned is set aside on the following grounds:

- a) The same is unreasoned. An unreasoned order amounts to violation of the principles of natural justice.
- b) The order suffers from non-application of mind.
- c) The contentions of the writ petitioners with regard to the alleged agreement which had been entered into with the gram panchayat and the villagers, for exchange of another portion of the land in lieu of the internal road, had not been considered.

- d) The panchayat authorities did not mention the ground reality, the position of the land in the LR records or in the mouza map, while coming to the finding. Acting solely on the advice and/or suggestion of the Block Land & Land Reforms Officer, the decision was taken.
- e) Finally, the decision does not indicate whether the alleged road belonged to the gram panchayat and had been demarcated and recorded as a village road. The decision indicates that on the advice of the Block Land & Land Reforms Officer, the panchayat authorities decided to earmark the said road for use by the villagers.

Under such circumstances, the panchayat authorities shall revisit the issue upon granting an opportunity of hearing to the petitioners, the respondent nos. 6 to 9, to other villagers and authorities who may be aware of the actual state of affairs.

It is also made clear that all the factual aspects should be considered.

Before any decision is taken, an inspection of the entire site including the alternative route shall be made in the presence of the parties, the Block Land

& Land Reforms Officer and the Block Development Officer.

A report of such inspection shall be handed over to the parties. The parties shall be allowed to respond to such report. Thereafter, a decision shall be taken and implemented.

A reasoned order shall be passed and communicated to all concerned. The court has not gone into the merits of the claims and counter claims.

The entire exercise shall be completed within a period of two months from the date of communication of this order.

As no affidavit has been called for, allegations are deemed to have been denied.

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.

Let plain copy of this order duly countersigned by the Assistant Registrar (Court), be given to the parties on usual undertakings.

(Shampa Sarkar, J.)