

03.01.2023
Court No. 19
Item no.02
CP

W.P.A. No. 14036 of 2022
with
CAN 1 of 2023

Nitai Biswas & anr.

Vs.

The State of West Bengal & Ors.

Mr. Partha Sarathi Bhattacharyya, Sr. Advocate
Mr. Raju Bhattacharyya

...for the petitioners.

Mr. Raja Saha
Mr. S.P. Lahiri

....for the State.

Mr. Shamim-ul-Bari
Mr. Md. Hasanuz Zaman
Mr. Md. Zeeshanuz Zaman
Ms. K. Sutradhar

...for the respondent nos. 10 to 15.

In this writ petition the petitioners have assailed the orders dated April 27, 2022 and June 7, 2022 passed by the Block Development Officer, Bhangar-I and the Sub-Divisional Officer, Baruipur, respectively.

The petitioners contend that the Block Development Officer did not have the jurisdiction to pass the order dated April 27, 2022 as the said authority has not been empowered by law to take any decision with regard to unauthorized constructions.

Referring to the order of this court dated September 14, 2021, the writ petitioners submit that

the court had directed the competent authority of the Chandaneshwar – I Gram Panchayat to dispose of the representation of the respondent nos. 10 to 15 in accordance with law, upon granting an opportunity of hearing to the petitioners. Further direction was passed upon the competent authority of the gram panchayat to cause an inspection, to supply a copy of the inspection report and thereafter, grant an hearing to all the parties. A reasoned order was directed to be passed and communicated.

According to Mr. Bhattacharyya, learned senior advocate for the petitioners, such exercise was not completed by the panchayat authorities. Instead, after holding an inspection, the entire matter was referred to the Block Development Officer. Such action was contrary to the directions of this court. The Block Development Officer in turn, passed an order, inter alia, holding the construction of the petitioners to be illegal and unauthorized. It was held that no permission had been granted by the panchayat authorities.

Although such order was passed by the Block Development Officer relying upon a report filed by the Pradhan of the concerned gram panchayat, such exercise was neither authorized by law nor was the said order passed in compliance with the direction of this court. The matter was then referred to the Sub-

Divisional Officer under Section 23(5) of the West Bengal Panchayat Act, 1973, for further action and demolition.

The petitioners allege that the order of the Sub-Divisional Officer directing demolition has been relatively influenced by the order of the Block Development Officer and, as such, the entire exercise which had been undertaken by the authorities was contrary to law and also contrary to the order passed by this court.

Mr. Bari, learned advocate appearing on behalf of the respondent nos. 10 to 15, submits that the admitted position is that the petitioners do not have any sanction and, as such, a technical irregularity or a deviation from the directions of this court, could not condone such an unauthorized construction. An illegal construction, cannot be allowed to stand for a single day.

Mr. Lahiri, learned advocate appearing on behalf of the State respondents, submits that the Sub-Divisional Officer not only relied on the order passed by the Block Development Officer but had also independently applied his mind to the report of the Pradhan. An extended hearing was given to the writ petitioners. Thus learned Advocate submits that there has been substantial compliance of the legal

provisions. The order impugned directing demolition of the structure should not be set aside by this court.

Although, the law is well settled that an unauthorized construction cannot be protected and the same must be demolished, the law also provides that the person responsible for such unauthorized construction must be given adequate opportunity to substantiate his case. Such provision is in consonance with the principles enshrined in Article 14 of the Constitution.

The court had directed that an inspection should be made in the presence of the parties and the report of such inspection must be handed over the parties to enable them to respond to the same and make their submissions at the hearing.

From the records which have been submitted before the court, it does not appear that the panchayat authorities had either prepared an inspection report or had forwarded the same to the parties.

The petitioners who are likely to be affected by any decision to be taken in this regard, were entitled to a copy of the report. Instead, the panchayat authorities misunderstood the order of the court and forwarded the report to the Block Development Officer. The Block Development Officer also misunderstood the order of the court and passed

another order, thereby holding that the construction of the petitioners to be illegal.

Such exercise by the Block Development Officer was not authorized by law.

Even if the panchayat authorities had caused an inspection, the court had directed that the report of such inspection should be handed over to the parties and a hearing should be given to the parties. Thereafter, a reasoned order was directed to be passed and communicated to all. Further, steps under Section 23(5) of the West Bengal Panchayat Act, 1973 was to be taken after the aforementioned exercise was completed by the panchayat authorities.

Thus, in view of the above set of facts and the misunderstandings that had taken place between the authorities, the orders impugned dated April 27, 2022 and June 7, 2022 are set aside and quashed only on the ground of procedural irregularity. The factual findings have not been interfered with as there is nothing on record which can controvert such finding.

When the law provides that an opportunity must be given to the persons responsible for such construction, this court directs that a further inspection be made by the Chandaneshwar – I Gram Panchayat on February 1, 2023 at 11 am. Such inspection shall be held in respect of the

construction of the petitioners on L.R. Dag No. 105 pertaining to L.R. Khatian No. 259/1 of Mouza – Karunahati.

This order shall amount to notice to the parties. No further notice shall be issued upon the parties. The parties shall be present at the site on the date and time fixed by the court.

If the parties are not available, the inspection shall be carried on in their absence. A report shall be prepared and handed over to the respective parties and/or their representative(s). Thereafter, the parties shall be entitled to file their written statement/answers to the said report within February 10, 2023. A hearing shall be given by the concerned gram panchayat to the parties on February 13, 2023 at 12 noon. No further notice of hearing shall be served.

A reasoned order shall be passed and served upon the parties within February 24, 2023. Simultaneously, the order shall be forwarded to the Sub-Divisional Officer, Baruipur as per Section 23(5) of the West Bengal Panchayat Act, 1973 by the concerned gram panchayat. Thereafter, steps shall be taken by the Sub-Divisional Officer, Baruipur in accordance with law, within six weeks from receipt of the papers from the panchayat authorities.

The court has not gone into the merits of the claims and counter claims of the parties and the issues involved shall be decided independently.

Accordingly, the writ petition is disposed of.

With the disposal of the writ petition, CAN 1 of 2023 is also disposed of.

All consequential orders directing demolition of the construction are also set aside.

The petitioners are directed to communicate this order to the concerned panchayat authorities.

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.)