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14.09.2023
A.G.M.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 21863 of 2023

**Ahamed Shams Tabrij @ Samsul Tabrij Ahmed @
Arup Middya & Anr.
-versus
The State of West Bengal & Ors.**

**Mr. Biswajit Hazra
...For the Petitioners.**

**Mr. Sankar Proshad Dalapati
Mr. Safik Dewan
Mr. A. Santra
... for the respondents no. 6
to 8.**

**Mr. Lalit Mohan Mahata, AGP
Mr. Rudranil De
... for the State.**

Affidavit-of-service filed in Court today be kept with the record.

Supplementary affidavit filed on behalf of the petitioners be taken on record.

The petitioners are aggrieved by the notice issued by the Pradhan, Bhalki Gram Panchayat, Aushgram II Panchayat Samity dated 4th September, 2023 and the subsequent notice dated 7th September, 2023 directing the petitioners to hand over possession of the Community Hall used by the petitioners.

The petitioners rely upon an agreement dated 3rd December, 2021 executed by and between the Pradhan of the Gram Panchayat and the petitioner no. 2 whereby the said Community Hall was given to the petitioner no. 2 on yearly rent of Rs. 10,000/-(ten thousand only).

There was a tenancy agreement in between the Pradhan of the Gram Panchayat and the petitioner no. 2. The agreement was signed by the Pradhan, the petitioner no. 2 and the witnesses were the Nirman Sahayak and the Upa Pradhan of the Gram Panchayat.

Learned advocate for the petitioners submit that the impugned notices were issued without affording any opportunity of hearing to the petitioners. As per the tenancy agreement, the Community Hall in question was given on rent to the petitioner no. 2 for a period of fifteen years. The Pradhan ought not to have issued the impugned notices as the same amounts to termination of the contract without affording any opportunity of hearing.

Learned advocate representing the Pradhan submits that the tenancy agreement in question was subsequently terminated. It has, however, been fairly submitted that the fact of termination of the agreement was not communicated to the petitioners.

It has been submitted that the Pradhan could not have been entered into the agreement of such nature with the private respondent no. 2.

The land in question where the Community Hall was set up was gifted by the recorded owner in favour of the Panchayat by way of an undertaking.

Learned advocate representing the State respondents submits that it was not proper for the Pradhan to enter into such type of agreement.

The respondents are ad idem with the submission that the writ petition is not maintainable. Contractual obligations of the parties flowing from a contract ought not to be adjudicated by the writ Court.

I have heard the submissions made on behalf of all the parties and have perused the materials produced before this Court.

It appears that an agreement was entered into by and between the Pradhan of the Gram Panchayat and the petitioner no. 2. The fact of entering into the agreement is not disputed by any of the parties. It has been submitted that execution of such type of agreement is impermissible in law.

It appears that the land in question was not formally gifted to the Panchayat. There is no registered document showing transfer of the said property in favour of the Panchayat. As on date, the land in question is recorded in the name of the father of the petitioners (since deceased).

The Panchayat has already adopted a resolution to cancel the concerned agreement. The fact of cancellation is yet to be made known to the petitioners and the impugned notices requiring the petitioners to hand over the possession of the said Community Hall was issued without affording any opportunity of hearing. The petitioners are in occupation of the Community Hall from December, 2021. Directing them to hand over the possession without hearing them is contrary to the principle of natural justice. One opportunity ought to be given to the petitioners to put forward their stand.

Accordingly, the Block Development Officer, Aushgram Development Block is directed to give an opportunity of hearing to the petitioners and to the representative of the Panchayat to produce all relevant documents in support of their claim at the earliest but positively within a period of eight weeks from the date of communication of this order. A reasoned order shall be passed and communicated to all the parties.

The impugned notices directing the petitioners to hand over the possession of the Community Hall shall be kept in abeyance till a decision is taken by the Block Development Officer.

It is made clear that the Court has not entered into the contractual obligations, if any, of the parties and the Block Development Officer shall take an independent decision in the matter after hearing the submissions and upon perusal of the documents placed before the said officer.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)