

31.03.2023
Sl. No.50(DL)
srm

W.P.A. No. 21576 of 2018

Sri Banamali Mahapatra

Versus

The State of West Bengal & Ors.

Mr. Ziaul Haque,
Mr. Manish Kumar Das,
Mr. Himadri Kumar Mahata,
Mr. Kartik Das

....for the Petitioner.

Ms. Sima Adhikary,
Ms. Anita Deb Jana

...for the State-respondents.

Despite repeated service of notices, none appears on behalf of the respondent Nos.9 to 11.

The predecessor-in-interest of the petitioner approached this Court by filing WP No.5740 (W) of 2016 alleging that an illegal construction had been made on Plot No.1387 of mouza Khejuri, without authority of law. The mother of the petitioner also claimed right, title and interest in respect of the said plot. A representation was sent to the Sub-Divisional Officer, Contai, Purba Medinipur with the allegation of such unauthorised construction.

The construction allegedly was made under a state welfare scheme as had been submitted before the learned

coordinate Bench at the time of hearing of WP No.5740 (W) of 2016 by the respondent Nos. 9 to 11. Accordingly, the learned coordinate Bench directed the Sub-Divisional Officer, Contai to dispose of the representation of the petitioner's mother in accordance with law upon granting an opportunity of hearing to all the parties.

Pursuant to the order of the learned coordinate Bench, an order dated January 10, 2018 had been passed by the Sub-Divisional Officer, Contai. The implementation of the said order has been sought for in this writ petition.

The ordering portion of the said decision of the Sub-Divisional Officer is quoted below for convenience:

"Report was called for from BL&LRO, Khejuri-II and BDO, Khejuri-II and from said report it is evident that, Geetanjali Housing Scheme was sanctioned to Narayan Mahapatra, son of Haripada Mahapatra in Plot No.3117 of Mouza Khejuri, J.L. No.49 which was recorded in the name of said beneficiary but he constructed his house in Plot No.1387, J.L. No.49 of Mouza Khejuri, instead of Plot No.3117.

As per certified copy of Record of Rights, as submitted by BL&LRO, Khejuri-II, Plot No.1387 is recorded in the name of Nirmal Mahapatra (Khatian No.1039).

It is evident that Narayan Mahapatra, beneficiary of Geetanjali Housing Scheme has not constructed the house under Geetanjali Housing Scheme in the land at which it was sanctioned, on the contrary constructed, the in a land which does not belong to him.

This is a violation of guideline of Geetanjali Housing Scheme and tentamounts to misappropriate of fund.

Hence it is ordered that – Sri Narayan Mahapatra will return the money which he received for construction of said house under Geetanjali Housing Scheme to Government.

BDO, Khejuri-II is directed to issue a notice to Sri Narayan Mahapatra, for returning back said money. BDO, Khejuri-II is also directed to take legal action against Sri Narayan Mahapatra, if he does not return the same money.

The petitioner, however, if aggrieved, may approach to competent court of law for removal of unauthorised encroachment from the scheduled land.

The case is dispose off.

All concerned be informed accordingly.

Sub-Divisional Officer
Contai”

From the order of the Sub-Divisional Officer, it has been established that the construction on Plot No.1387 was not under any housing scheme and thus, unless the same was permitted by the panchayat authorities, it can be safely presumed that the construction is unauthorised. The decision taken by the Sub-Divisional Officer was limited to the allegation that even if the construction was under a housing scheme, the same was not erected on the plot in respect of which the sanction under the scheme had been granted, namely, Plot No.3117 of mouza Khejuri. Having found that there had been violation of the guidelines under the Geetanjali Housing Scheme, the Sub-Divisional Officer arrived at the conclusion that the respondent No.9 misappropriated the fund sanctioned under the scheme

and steps should be taken for return of the money to the government. The Block Development Officer, Khejuri-II was directed to issue notice upon the said respondent and to take legal action.

The Block Development Officer, Khejuri-II has filed a report. It appears that on the basis of the direction of the Sub-Divisional Officer, Contai, an FIR was registered and Talpatighat Coastal PS Case No.62 of 2018 had been initiated under Section 420 of the Indian Penal code. The police authorities completed the investigation and submitted a charge sheet against the respondent No.9. A copy of the charge sheet has been submitted before the Court, which is taken on record.

Thus, no further protection is to be given to the construction on Plot No.1387, which was admittedly not under any housing scheme as per the finding of the Sub-Divisional Officer, Contai.

In the absence of the respondent Nos.9 to 11 and the Pradhan of Khejuri No.3 Gram Panchayat, it is not possible for the Court to ascertain whether the construction had been permitted under the Panchayat Act or not. The previous rounds of litigation do not indicate that any construction had been permitted by the panchayat authorities, but the Court deems it fit to relegate the matter

before the panchayat authorities for adjudication of the legality of such construction in terms of Section 23 of the West Bengal Panchayat Act, 1973.

The petitioner will file an objection on the basis of the findings of the Court and the order of the Sub-Divisional Officer, Contai before the Khejuri No.3 Gram Panchayat. The Khejuri No.3 Gram Panchayat shall be disposed of the said objection in accordance with law.

While deciding the objection, the permission granting authority shall adhere to the following procedure:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent Nos.9 to 11, with 48 hours advance notice to the petitioner and the respondent Nos.9 to 11.
- b) A report of the inspection shall be prepared along with the sketch map, indicating the extent of unauthorized construction, if any.
- c) Such report shall be handed over to the petitioner as also the respondent Nos.9 to 11.
- d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and had been continuing,

the authorities may take interim measures by stopping such construction.

- e) A hearing shall be given to all the parties. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions, before the competent authority.
- f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

The entire exercise shall be completed within a period of three months from the date of receipt of the objection.

The question of title, possession, encroachment, etc. shall not be gone into. The issue to be decided is whether the construction on plot No.1387 of Mouza Khejuri had been sanctioned or not.

The remedy of the petitioner to approach the civil court is left open.

A copy of the writ petition along with a server copy of this order be served upon the Secretary, Khejuri No.3 Gram Panchayat, District-Purba Medinipur.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)