

D/L
Item No. 4
22.02.2023
KOLE

**MAT 1647 of 2022
With
IA No. CAN 1 of 2022**

**Shyamal Kumar Mondal
-Vs.-
The State of West Bengal & Ors.**

*Mr. Balailal Sahoo,
Mr. S. Banerjee,
Mr. Dilip Kr. Mondal,*

...for the appellant.

*Mr. Naba Kr. Das,
Mr. Subhabrata Das,*

...for the State.

Mr. Soumik Ganguli,

...for the respondent no. 10.

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

This appeal is directed against a judgment and order dated September 19, 2022, whereby WPA No. 20681 of 2022, filed by the appellant herein, was disposed of.

It appears that the appellant approached the learned Single Judge with the grievance that the private respondent has constructed a house under the Pradhan Mantri Awas Yojana Gramin Scheme, without adhering to the relevant building rules and also upon encroaching on the petitioner's land and Government land.

The learned Judge observed that the authorities came to a preliminary finding that the construction was not on the land of the petitioner, based on demarcation and records.

It appears that a notice had been issued by the concerned Gram Panchayat on June 27, 2022 calling upon

the petitioner/appellant to produce relevant records but the appellant did not respond to such notice. Such notice had been issued pursuant to a direction of the learned Single Judge of this Court contained in an order dated January 17, 2022 passed in WPA 9405 of 2020, which was a writ petition also filed by the appellant herein.

The said writ petition was disposed of by the learned Single Judge with the following directions:-

“However, the competent authority of Jogeshganj Gram Panchayat is directed to make a fresh inspection of the premises of the alleged construction in order to ascertain whether the said construction has been made in accordance with the rules, guidelines and permission granted to the respondent no. 11 for a construction under the PMAY-G Scheme. The inspection report will be handed over to the parties. The parties must be allowed to file their written version/objection and a hearing shall be given to them.

If it is found that the said construction has been made in accordance with the guidelines and drawings approved for such construction under the PMAY-G Scheme, the authority shall pass a reasoned order to that effect intimating the same to the parties. If it is found that the said construction is being made contrary to the provisions of law, then the Panchayat authority shall act and proceed accordingly. A reasoned order shall be passed in this regard and communicate to the parties.

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

Regarding the allegation of encroachment and the dispute with regard to the title of the parties, the parties are at liberty to approach the appropriate Civil Court in accordance with law.”

Pursuant to the aforesaid order, the notice dated June 27, 2022 was issued by the Pradhan of the concerned Gram Panchayat.

The learned Single Judge disposed of the present writ petition with the following observations:-

“The petitioner is granted one month’s time to comply with the notice dated June 27, 2022. Such notice was issued by the Pradhan, Jogeshganj Gram Panchayat pursuant to the direction of this court dated January 27, 2022.

In case the petitioner can show contrary records and documents, the authorities shall make a further enquiry and demarcate the land in presence of all the parties. In case the petitioner is not able to produce any documents, further enquiry by the authorities is not warranted. In any event, dispute with regard to title and possession has to be settled by a civil court. Only the allegation of unauthorized construction can be decided by the panchayat authorities.

The writ petition is disposed of accordingly. A reasoned order shall be passed and communicated to all.

If the petitioner files a representation, the copy of the same shall be supplied to the respondent no. 11 and the panchayat authorities shall proceed accordingly, upon granting adequate opportunity of hearing to not only the petitioner but also to the respondent no. 11 and all other co-sharers.

The entire exercise shall be completed within a period of 3 months from the date of receipt of the petitioner’s representation.”

Being aggrieved, the writ petitioner has come up by way of this appeal.

Mr. Sahoo, learned Advocate appearing for the appellant, took us through various documents and reports of diverse authorities. He took great pains to point out apparent inconsistencies in the reports of the different

authorities. Submission was made at length on various factual aspects including encroachment. All these aspects cannot be conveniently considered by the writ court. The learned Judge rightly directed the concerned Panchayat to consider whether or not the house of the private respondent has been constructed following the applicable building rules. The learned Judge had observed in the earlier order dated January 17, 2022 that the issue of alleged encroachment and dispute with regard to title can be taken to a civil forum.

We see no apparent infirmity in the order of the learned Single Judge.

Further, learned Advocate for the Pradhan of the concerned Gram Panchayat draws our attention to an order dated November 3, 2022 passed by the Jogeshganj Gram Panchayat pursuant to the order impugned in this appeal. In other words, the order challenged before us, has been carried out. Strictly speaking, this appeal has become infructuous. If the appellant is aggrieved by the order dated November 3, 2022, passed by the concerned Gram Panchayat, he will be at liberty to challenge the same before the appropriate forum in accordance with law.

Mr. Sahoo points out that the order dated November 3, 2022 says that a hearing was held on October 27, 2022. However, that was a holiday. Hence, in fact, no hearing was held.

Learned Advocate for the Pradhan says that notice of the meeting was served on the appellant but the appellant failed to attend the meeting. The appellant further says that

he attended the meeting but his presence has not been recorded.

Mr. Sahoo says that upon receipt of notice dated October 14, 2022 issued by the Panchayat fixing the date of hearing on October 27, 2022, the appellant on October 25, 2022, made a written request to the Gram Panchayat to defer the hearing fixed on October 27, 2022 in view of the pendency of the present appeal. However, the Gram Panchayat went ahead and allegedly held the meeting scheduled for October 27, 2022.

All these points, the appellant will be at liberty to agitate before the appropriate forum in a proceeding that the appellant may institute for challenging the order dated November 3, 2022 passed by the concerned Gram Panchayat.

As aforestated, we find nothing wrong with the order under appeal which may call for our interference. The appeal and the connected application are, accordingly, dismissed.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)