

S/L 2
10.01.2023
Court. No. 19
GB

W.P.A. 25954 of 2022

Nilkanta Sen
VS
The State of West Bengal & Ors.

*Mr. Achintya Kr. Banerjee,
Mr. Jayanta Samanta*

...for the Petitioner.

Mr. Susanta Pal

...for the State.

*Mr. Tanweer Jamil Mandal,
Ms. Somashree Dey*

...for the Respondent Nos.4 to 6.

Mr. Jayanta Mitra

...for the Respondent No.7.

In this writ petition the petitioner seeks a declaration that the actions of the Gohogram gram panchayat with regard to the demolition and demarcation be rescinded and withdrawn.

Upon perusal of the clarification given by the Hon'ble Division Bench by the order dated January 9, 2023, this Court is of the view that the issue of demolition is no more open for challenge. The demolition took place and was completed by the panchayat authorities. All the actions taken by the panchayat authorities were on the basis of the direction of a coordinate Bench dated December 1, 2022 passed in WPCRC No.175 of 2022 arising out of W.P.A. No.8328 of 2021 read with CAN 3 of 2022. The said Court was of the clear and unequivocal view that the demolition order must be carried out and the interim order staying the demolition had been vacated. The Pradhan, in terms of the order of the coordinate Bench dated February 18, 2022

conducted an enquiry in the presence of the Block Land and Land Reforms Officer and the Amin. The pradhan came to the following finding:-

- a) That the land in question had not been converted from agricultural to residential.
- b) No permission or sanction was obtained.
- c) Demarcation of the land of the private respondents vis-à-vis the writ petitioner had been found to be faulty and the land on which the construction had been effected illegally, may not belong to the private respondents.

The order of self-demolition dated September 1, 2022 issued by the Pradhan and the order of the Sub-Divisional Officer dated August 22, 2022 had not been challenged by the authority.

Thus, the order of self-demolition passed by the Pradhan and which was concurred with by the Sub-Divisional Officer in the order dated August 22, 2022 had been upheld by a coordinate Bench of this Court. MAT 1911 of 2022 was preferred by the petitioner.

Although, it was urged before the Hon'ble Division Bench that the Sub-Divisional Officer had not granted any hearing to the petitioner, the Hon'ble Division Bench was of the view that the order appealed from did not suffer from any illegality and the learned Judge had come to certain findings thereby directing implementation of the order of demolition. The Hon'ble Division Bench held that unless the order appealed from was perverse or in breach of the

principles of natural justice, such order should not be interfered with.

The contention of Mr. Banerjee that the order dated February 18, 2022 by which the residuary Court had directed steps be taken with regard to the unauthorized construction by the panchayat authorities was a nullity, was also not accepted by the Hon'ble Division Bench. However, the Hon'ble Division Bench granted liberty to the petitioner to challenge the findings of the panchayat before the appropriate forum. Their Lordships also directed that the pending writ petitions be decided on their own merits.

The demolition was directed by an order of a coordinate Bench. Such order was upheld by the Hon'ble Division Bench. The demolition order could not be interfered with by this Court. The said issue had already been put to rest in the aforementioned proceedings. Moreover, the demolition has been effected. This court cannot reverse the situation. The Hon'ble Division Bench also did not entertain the submission of Mr. Banerjee that the order of the Sub-Divisional Officer was without following the principles of natural justice as no hearing was given to his client.

The panchayat authorities have a right to take steps in accordance with law, if an unauthorized construction is detected. In this case, the petitioner admittedly did not have any sanction. The petitioner also could not produce any sanction before this Court justifying that the actions taken by the panchayat authorities was either without jurisdiction or unwarranted. Moreover, there is no conversion certificate

indicating that the conversion had been made from agricultural land to Bastu. Rule 26 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 clearly provides that permission to construct cannot be given by the panchayat authorities except when the land is classified as a Bastu.

Thus, on the basis of these two findings, the Court does not find any fault with the action taken by the panchayat authorities in adjudicating the issue of unauthorized construction. The panchayat authorities sent the order to the Sub-Divisional Officer in terms of Section 23(5) of the West Bengal Panchayat Act, 1973. The Sub-Divisional Officer concurred with the findings of the Pradhan. However, it is a matter of record that no hearing was given to the petitioner by the Sub-Divisional Officer although the law requires the same. The Sub-Divisional Officer has filed a report, inter alia, stating that the parties did not seek a hearing. That is not what the law provides. The Sub-Divisional Officer ought to have sent a notice of hearing to the parties, which was not done. Instead, the Sub-Divisional Officer sent back the papers to the panchayat authorities under Rule 33 of the said rules.

At this stage, when the demolition has been effected, such contention of the petitioner becomes an academic discussion only. The petitioner thus would be at liberty to avail of other remedies under the law, if available, against the Sub-Divisional Officer for non-compliance of the

statutory provisions. The finding of the Pradhan and the of demolition, is not interfered with.

Any finding with regard to encroachment or with regard to the title of the parties in respect of the land in question in the enquiry report shall be restricted to these proceedings alone and shall not have any effect in any civil suits or in any proceeding that may be initiated by the parties with regard to the aforementioned land in future.

The prayer 'C' of the writ petition has now become infructuous as the demolition has been effected.

Although, it is the contention of the petitioner that the construction had been done by invoking the provision of deemed sanction, the petitioner has not able to produce any document in support of such contention that any plan in the prescribed form had ever been submitted with the authorities. The panchayat authorities also deny having received any application in the prescribed form for grant of sanction. Thus such contention is not accepted. Moreover there is no conversion, so the provision of deemed sanction could not be invoked.

This order shall not prevent the petitioner from approaching the authority in future, in accordance with law, for sanction to construct. If such application is made, the same shall be disposed of in accordance with law. However, it is made clear that no application for sanction can be made unless the petitioner complies with the legal requirements as per the provisions of the Act, including conversion.

This order shall not be construed as an opinion of the Court on the right, title and interest of the petitioner in respect of the disputed land. The other prayers restraining the panchayat authorities from taking coercive steps, have become infructuous in view of the denial of the interim protection by this Court on an earlier occasion and in view of the subsequent demolition. All issues with regard to the title over plot nos.711 and 711/1319 and touching the questions of encroachment, occupation, demarcation, etc., shall be decided by the appropriate civil court.

Mr. Banerjee's apprehension that this order may prejudice the pending civil suit is put to rest, as this Court clearly directs that this order is restricted only to the allegations made in the writ petition and the issues which are pending before the civil court between the parties, shall not be affected.

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.

(Shampa Sarkar, J.)