

16.02.2023
Sl. No.1(DL)
srm

W.P.A. No. 26493 of 2022

Krishna Biswas

Versus

The State of West Bengal & Ors.

Mr. Samirul Sardar

....for the Petitioner.

Mr. Raja Saha,
Mr. Ratul Das

...for the State-respondents.

Despite service, none appears on behalf of the respondent No.8. Affidavit of service is taken on record.

It appears that the Block Development Officer, Karimpur-I Development Block, Nadia, passed an order directing both the petitioner and the respondent No.8 to demolish their respective unauthorised constructions on the ground floor as also on the first floor. The Pradhan, Karimpur-II Gram Panchayat was directed to submit a compliance report before the authority.

The law is that the permission granting authority is empowered to detect unauthorized construction and thereafter refer the matter to the Sub-Divisional Officer for necessary action with regard to such unauthorised

construction in accordance with Section 23(5) of the West Bengal Panchayat Act, 1973.

In this case, the Karimpur-II Gram Panchayat had been directed by this Court, while disposing of WPA 20166 of 2021 and WPA 16743 of 2021 filed by the respective parties against each other's construction on January 14, 2022, to take steps in accordance with law. The ordering portion is set out below:

"Having considered the rival contentions of the parties, this Court is of the opinion that the question of title or encroachment or boundary dispute cannot be decided either by this Court or by the panchayat authorities. Whether the parties are required to take permission to construct the alleged boundary wall is also a matter to be looked into by the authority empowered by law.

In view of the fact that both parties have made the allegations against each other with regard to unauthorised/illegal constructions, this Court is of the opinion that the competent authority of Karimpur-II Gram Panchayat shall look into the issue. Accordingly, both the parties are granted liberty to file their respective complaints in details before the concerned authority. The concerned authority shall dispose of the said complaints in the manner provided hereinbelow:

- (a) The competent authority of the Karimpur-II Gram Panchayat shall cause an inspection of the premises in question in the presence of all the interested parties in order to ascertain whether there are any unauthorised constructions and also to ascertain the extent and nature of the unauthorised construction, if any.
- (b) A copy of the inspection report shall be handed over to the respective parties.
- (c) The respective parties shall be given a hearing.

(d) The parties shall be allowed to file their written versions and adduce oral and documentary evidence in support of their respective claims at the hearing.

(e) A reasoned order shall be passed and communicated to all concerned.

(f) Needless to mention that the entire proceedings shall be reached to its logical conclusion in terms of Section 23 of the West Bengal Panchayat Act.

In view of the rising pandemic situation, the entire exercise shall be completed within a period of eight months from the date of communication of this order.

This Court has not gone into the merits of the claims and counterclaims of the parties and all points will be decided by the municipal authorities, independently.

Both the writ petitions are, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order."

On the last occasion, Mr. Saha, learned Advocate for the State-respondents was directed by the Court to ascertain how the Block Development Officer, Karimpur-I Development Block, assumed the jurisdiction to pass the order of demolition. Mr. Saha has produced certain documents with instructions. The same are taken on record. It appears that pursuant to the order of the Court, Sub-Divisional Officer, Tehatta, directed the Block Development Officer, Karimpur-I to dispose of the issue.

The Block Development Officer directed the Pradhan, Karimpur-II Gram Panchayat to dispose of the matter as per the direction of the Court. The Pradhan approached the Block Development Officer and requested the said authority to dispose of the matter as she was unable to proceed with the same. On the basis of such request, the Block Development Officer conducted a joint enquiry with the help of the Nirman Sahayak and passed the order impugned. A hearing was also held by the Block Development Officer.

Now one of the parties has approached the Court after having suffered an order of demolition alleging lack of jurisdiction of the Block Development Officer.

Section 23 of the West Bengal Panchayat Act, 1973 has been violated by the Block Development Officer and also the Pradhan, Karimpur-II Gram Panchayat while dealing with the matter. Apart from that, the order of this Court has also been violated. The permission granting authority, that is, Karimpur-II Gram Panchayat was directed to proceed in accordance with law. The method and manner in which the matters were to be disposed of, had been categorically set out by the Court.

The gram panchayat refused to discharge its obligation. The Sub-Divisional Officer, Tehatta, also did

not discharge his obligation under the law, instead the Block Development Officer, Karimpur-I Development Block was made the scapegoat.

The order impugned is set aside and quashed. By setting aside the order impugned, the right of the respondent No.8 to have his complaint in respect of the construction of the petitioner to be heard and dealt with by the appropriate authority is also being upheld. Thus, this order is not adverse to the interest either of the petitioner or the respondent No.8. The order of this Court dated January 14, 2022 shall be complied with by the Karimpur-II Gram Panchayat and thereafter by the concerned Sub-Divisional Officer as per Section 23(5) of the West Bengal Panchayat Act, 1973. Decisions shall be taken in respect of the constructions of either party which were subject matters in WPA 20166 of 2021 and WPA 16743 of 2021.

The writ petition is, thus, disposed of.

There will be no order as to costs.

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

(Shampa Sarkar, J.)