

D/L
Item No. 11
06.01.2023
KOLE

**MAT 2052 of 2022
With
IA No. CAN 1 of 2022
With
WPA 24343 of 2022**

**Biswajit Pramanik
-Vs.-
The State of West Bengal & Ors.**

*Mr. Soumen Kr. Dutta,
Mr. Sabyaschi Bhattacharyya,*

...for the appellant.

*Mr. Jahar Lal De,
Mr. Abdus Salam,
Mr. Sima Adhikari,*

...for the State.

Mr. J. N. Manna,,

...for the Gram Panchayat.

Mr. Dilip Kr. Sinha,

...for the private respondents.

Read order dated 23.12.2022.

Affidavits in opposition to the writ petition filed on behalf the Pradhan of the concerned Gram Panchayat as well as on behalf of the private respondents be kept with the records. Affidavit in reply filed in response to the affidavit in opposition of the private respondents also be kept with the records.

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

It appears that an order of demolition was issued by the Pradhan of the concerned Gram Panchayat for demolition of a wall constructed by the appellant/writ petitioner. The appellant challenged such order by filing WPA 4993 of 2022. By a judgment and order dated April 6,

2022, a learned Single Judge disposed of the writ petition by setting aside the demolition order and observing as follows:

“When the panchayat authorities are revisiting the matter afresh, they shall permit the parties to appear and make their submissions and produce necessary documents.

It the matter is referred to the Sub-Divisional Officer by the permission granting authority on detection of unauthorized construction the matter shall be disposed of. The parties shall be heard. The only question to be determined would be the allegation of unauthorized construction. The Sub-Divisional Officer will proceed in accordance with law and pass necessary orders within four weeks from the reference.”

The reason why the learned Judge set aside the demolition order was basically that it was the Gram Panchayat which was the Competent Authority to issue such order and not the Pradhan in his individual capacity.

Pursuant to such order the Pradhan acting on behalf of the Gram Panchayat issued a notice of hearing to the appellant. The appellant, however, stated that it was the Gram Panchayat which should have issued the notice and not the Pradhan. The appellant sought adjournment. The Gram Panchayat nonetheless went ahead and held a meeting and took a decision on June 23, 2022, to recommend demolition of the concerned boundary wall put up by the appellant. Accordingly, the recommendation was made to the concerned Sub-divisional Officer for demolition of the concerned boundary wall.

The Sub-divisional Officer, by his order dated August 16, 2022 remanded the matter back to the concerned Gram Panchayat and observed as follows:-

“In view of the above circumstances the Chaitanyapur Gram Panchayat & the Pradhan is directed the recommendation sent by the panchayat does not reflects 1) proper opportunity of hearing was provided to the petitioners, 2) the point of law which were raised by the petitioner in the WPA 4993 of 2022, proper enquiry was conducted or not as to whether the boundary wall violates the provisions of Rule 19(3) of West Bengal Gram Panchayat Administration Rule 2004. 3) the petitioner has claimed vide a letter dt. 21/3/2018 the Pradhan Chaitanyapur G.P. had granted permission to the petitioner, whereas the proposal sent by the Pradhan has not made any enquiry into the issue whether such letter was issued or not by the Gram Panchayat.

4) more over the recommendation does not provide any map or inform of right title interest where the wall was constructed. Whereas it appears from the documents submitted so far by the gram panchayat in pursuance of the order of Hon'ble High Court, the laws of natural justice and the principle of “opportunity of hearing was not provided to the petitioner”.

Hence the gram panchayat which is the permission granting authority u/s 23 of the West Bengal Gram Panchayat Act 1973 to send a proper order sheet with all relevant documents after giving proper opportunity of hearing to all concerned and fulfilling the lacunae in the recommendation sent to the S.D.O within next two week for further hearing from SDO end. Next date of hearing fixed on 15.09.2022 at 3 p.m. dealing Assistant issue notice to all concerned date of hearing and the copy of the order be served upon the Gram Panchayat & its Pradhan to take necessary action before next date of hearing.”

It appears that thereafter on September 22, 2022, at a general meeting, the Gram Panchayat again decided to recommend demolition of the concerned boundary wall. However, no notice of this meeting had been issued to the appellant. It is fairly admitted by learned Advocate for the Panchayat and the private respondents that, in fact, the

appellant was not heard before the decision was taken on September 22, 2022, to recommend the concerned Sub-divisional Officer, demolition of the concerned boundary wall.

Pursuant to the second recommendation of the Gram Panchayat, the Sub-divisional Officer held a meeting on September 28, 2022, and after hearing all concerned parties including the appellant herein directed the appellant to demolish the concerned boundary wall within 60 days, failing which the Pradhan of the concerned Gram Panchayat will take necessary steps for demolition of the boundary wall. The appellant challenged this order in the present round of litigation before the learned Single Judge by filing WPA No. 24343 of 2022.

Upon the writ petition being moved, an interim order was passed on November 16, 2022, directing that the order of demolition be kept in abeyance till December 16, 2022.

On December 20, 2022, the writ petition was taken up for hearing by another learned Judge. Prayer was made on behalf of the writ petitioner for extension of the interim order. Such prayer was rejected. The learned Judge only directed exchange of affidavits. Being aggrieved by that order, the present appeal has been preferred by the writ petitioner.

We have heard learned Counsel for the parties at length. The primary point of learned Advocate for the appellant/writ petitioner is that after the Sub-divisional Officer by his order dated August 16, 2022, remanded the matter back to the concerned Gram Panchayat, no

opportunity of hearing was granted by the Panchayat to the appellant before the Panchayat again decided to recommend demolition of the concerned boundary wall. Learned Counsel says that although one of the grounds on which remand was made by the Sub-divisional Officer is that principles of natural justice were not adhered to by the Panchayat before making the first recommendation for demolition, again the Panchayat violated the principles of natural justice by not affording an opportunity of hearing to the appellant.

There is nothing on record to show that prior to making the second recommendation for demolition, an opportunity of hearing was given by the Panchayat to the appellant. Learned Advocates for the Panchayat and the private respondents fairly and candidly submitted that no such opportunity was, in fact, given to the appellant. They, however, submitted that the Sub-divisional Officer before passing the order dated September 28, 2022, heard all the parties including the appellant. According to us that is not of much relevance since the Competent Authority to recommend demolition is the Panchayat. The Panchayat, before recommending demolition of the boundary wall should have given an opportunity of hearing to the appellant. It did not do so. Clearly the principles of natural justice were breached. The second recommendation made by the Panchayat is, therefore, invalid and in fact non-est in the eye of law. Since the Sub-divisional Officer's order which was challenged by the appellant in the present round of litigation before the learned Single Judge, was based on the second

recommendation of the Gram Panchayat, the same would also lose its force and be of no effect since it would have no legs to stand on.

Accordingly, the second recommendation of the Gram Panchayat made on September 22, 2022, as well as the Sub-divisional Officer's order dated September 28, 2022, are set aside. The matter is remanded back to the concerned Gram Panchayat for taking a fresh decision and then to proceed in accordance with law.

We make it clear that we have not gone into the merits of the case at all. It is for the Panchayat to decide afresh as to whether or not the concerned boundary wall is unauthorized/illegal and then take steps in accordance with law without being influenced by any observation in this order. The Panchayat before taking such decision will afford an opportunity of hearing to all concerned parties including the appellant and the private respondents herein.

The Panchayat shall take a fresh decision within three weeks from the date of communication of this order. If any recommendation is made to the Sub-divisional Officer, he shall pass his order within four weeks from the date of such recommendation after giving opportunity of hearing to all concerned parties.

The appeal, the stay application and the writ petition are, accordingly, disposed of.

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.)