

17.01.2023
Court No. 19
Items 3 & 4
CP

WPA No. 28946 of 2022

S. Santosh Kumar Naidu
Vs.
The State of West Bengal & Ors.

with

WPA No. 29103 of 2022

Dr. Shibani Ghorai
Vs.
The State of West Bengal & Ors.

Mr. Debjit Mukherjee
Ms. Susmita Chatterjee
Mr. D. Ganguly
Mr. K. Bhattacharya

....for the petitioner in
WPA No. 28946 of 2022 and
respondent no. 9 in
WPA No. 29103 of 2022.

Mr. Mahendra Prasad Gupta
Mr. Ayan Mitra
Mr. Chandan Mondal
Ms. A. Panja

....for the petitioner in
WPA No. 29103 of 2022
and respondent no. 8
in WPA 28946 of 2022.

Ms. Monjuli Choudhuri
Ms. Mekhla Sinha

...for the Howrah Zilla Parishad.

Ms. Sutapa Sanyal
Mr. Anand Farmania

...for the State in WPA
No. 29103 of 2022.

Noticing that common issues are involved, the
writ petitions are heard analogously; they shall stand
disposed of by this common judgment and order.

WPA No. 28946 of 2022 is an application filed by the person responsible for an alleged unauthorized construction, who has challenged the order of demolition passed by the District Engineer, Howrah Zilla Parishad on various grounds:

- a) That the order of this court was not followed in its letter and spirit and the petitioner was not allowed to file any written objection or version to the inspection report.
- b) The argument of the respondent no. 8 in WPA 28946 of 2022 (petitioner in WPA No.29103 in 2022) was heard in the absence of the petitioner.
- c) Such exclusive hearings resulted in injustice as the petitioner was not aware of the submissions made on behalf of the respondent no. 8.

WPA No. 29103 of 2022 is an application filed by the respondent no. 8 in WPA 28946 of 2022 who prays for implementation of the order of demolition.

Mr. Gupta, learned advocate for the petitioner in WPA 29103 of 2022, submits that when there is a deviation of the sanction plan, the issues as to whether the person responsible for such construction/deviation was given an opportunity to controvert the inspection report and whether a written objection was allowed or not, is only an

academic one. He further submits that even if the admissions are not taken into consideration, the inspection report as it stands would indicate the deviations from the sanction. The writ petitioner in WPA 28946 of 2022, has not been able to show any evidence contrary to the findings in the inspection report. Thus, Mr. Gupta prays that the demolition order must be given effect to forthwith.

In the opinion of the court, the following questions have cropped up:

- a) Whether the order of demolition suffers from irregularities as submitted by the writ petitioner of WPA No. 28946 of 2022.
- b) Whether the order of demolition should be implemented as it is.
- c) Whether the proceeding carried out by the authority was in consonance with the order passed by this court or not.

Having heard the learned advocates for the respective parties, this court holds that the petitioner in WPA No. 28946 of 2022 should have been given an opportunity to file his written version, as per the court's direction.

Admittedly, the order of demolition reveals that on the date of hearing, there was a political disturbance and road blockade. The petitioner in WPA No. 28946 of 2022 could not attend the hearing.

The District Engineer heard the submissions of the petitioner in WPA No. 29103 of 2022 and concluded the same, but the opponent did not have any knowledge of such submissions.

In the opinion of the court, the hearing should have been held in the presence of both parties so that the parties would be aware of the rival submissions and would have the opportunity to controvert and contradict each other's submissions and statements.

Thus, the conclusion of the hearing of the petitioner in WPA No. 29103 of 2022 on June 13, 2022 and holding a separate hearing for the petitioner in WPA No. 28946 of 2022 on June 27, 2022 was not the correct procedure.

The other issues as to whether the authority had wrongly recorded the admission of the petitioner in WPA No. 28946 of 2022 and had denied an opportunity to the said petitioner to file the written objection to the inspection report are matters which have to be decided by the authority itself.

Thus, this court is of the view that the order of demolition which has been passed shall remain in force, but shall not be given effect to until a further hearing is given to the parties in presence of each other. Such hearing shall be given on February 13,

2023 by the District Engineer in terms of the provisions of the bye-laws, at 12 noon, in his office.

Both the parties shall be present with their written versions. No further notice shall be given. The hearing shall be concluded on the same day and a further order shall be passed, in accordance with law. Such order shall be in addition to and/or in substitution to or an amendment to the order already passed by the District Engineer dated July 8, 2022. The subsequent order will also be communicated to the parties. The entire exercise shall be concluded within a week from the date of conclusion of the hearing.

This court has not gone into the merits of the findings of the inspection report which are part of the records.

It is made clear that no further construction shall be made and the property shall not be encumbered in any way, till the issue is settled by the authority.

Both the writ petitions are disposed of accordingly.

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.

Photocopy of this order shall be retained with the records of WPA No. 29103 of 2022.

(Shampa Sarkar, J.)