

03. 05.09.2023
bd. Ct.15

WPA 30043 of 2015

Murari Purkait
-vs-
The State of West Bengal & Ors.

Mr. Sajal Kumar Pandit ... for the petitioner.

Mr. Kallol Bose
Mr. Srikanta Paul ... for the private
respondent no. 7.

Mr. Mahim Sasmal ... for the respondent no.6

In the writ petition, inter alia, the order dated 9th November, 2015 passed by Pradhan-in-Charge, Shikharbali-II, Gram Panchayat is under challenge. Said order dated 9th November, 2015 has been signed by the Pradhan-in-Charge on 16th November, 2015. Vide order dated 9th November, 2015 the petitioner was directed to demolish all constructions raised in terms of the building plan within fifteen (15) days from the date of communication of the reasoned order failing which the concerned Gram Panchayat shall demolish the said illegal and unauthorised constructions in the interest of the locality at an early date and cost of demolition of the said illegal and unauthorised constructions shall be recovered from the petitioner as arrear Gram Panchayat tax of the said property. Such decision to direct the petitioner to demolish the structure in question was passed in the backdrop of facts that sanctioned plan which was purportedly issued in favour of the petitioner was obtained by gross misrepresentation.

The matter was heard on number of occasions and due to accommodation prayed on behalf of petitioner final order could not be passed.

Today the writ petitioner is represented by learned advocate who submits that the petitioner had filed one review application before the Hon'ble Division Bench being RVW 48 of 2023 which was dismissed for default on 14th June, 2023 and subsequently one recalling application was filed before the Hon'ble Division Bench and the same is pending. Therefore appropriate direction has been prayed for before this Court today to keep the present writ petition pending till the disposal of the recalling application.

Respondent no. 7 and Pradhan-in-Charge being respondent no. 6 are represented by learned advocates.

Learned advocate representing the respondent no. 7 submits that for implementation of the order dated 9th November, 2015 whereby the present petitioner was directed to demolish the structure in question another writ petition was filed by respondent no. 7 being WPA 13763 of 2021 and the same was allowed by a coordinate Bench vide order dated 13th July, 2022. The concerned Sub-Divisional Officer, Baruipur, was directed to ensure that the order dated 9th November, 2015 passed by the Pradhan-in-charge of Shikharbali Gram Panchayat -II to be executed at an early date, if necessary, with the assistance of the concerned police authorities. Against the said order dated 13th

July, 2022 one intra court appeal being MAT 1518 of 2022 was preferred by the present writ petitioner which was dismissed by the Hon'ble Division Bench on 1st December, 2022 with an observation that no infirmity was found in the order under appeal which does not warrant interference on any ground. Therefore it has been submitted that in view of the order of the Hon'ble Division Bench dated 1st December, 2022 the issue has attained finality requiring dismissal of the present writ petition.

Having considered the submissions made on behalf of parties and upon perusal of the relevant materials available before this Court it appears that after the order dated 9th November, 2015 passed by Pradhan-in-Charge Shikharbali-II Gram Panchayat vide order dated 13th July, 2022 passed by the coordinate Bench on the writ petition filed by the respondent no. 7 direction was given upon the concerned Sub-Divisional Officer, to ensure demolition of the structure in question. Said order dated 13th July, 2022 was questioned by filing an intra court appeal by the present writ petitioner before the Hon'ble Division Bench and the intra court appeal was dismissed vide order dated 1st December, 2022 with the following direction:-

“ We do not find that the demolition order, implementation of which the learned Single Judge has directed, is without jurisdiction. The decision contained in the order is that of the Gram Panchayat and not of the Pradhan in charge. Since the said order has not been interfered with by any competent higher forum, the learned Judge committed no error

in directing that the order must be carried out. We find no infirmity in the order under appeal which does not warrant interference on any ground. The order of the learned Single Judge shall be carried out as directed.”

After dismissal of the appeal present petitioner preferred a review petition being RVW 48 of 2023 against the order of the Hon’ble Division Bench dated 1st December, 2022 and the said review petition was dismissed for default vide order dated 14th June, 2023.

It has been submitted that one recalling application is pending seeking recall of the order dated 14th June, 2023 passed by the Hon’ble Division Bench on the review petition.

In view of aforesaid chronology of facts it appears that the order passed by the coordinate Bench on 13th July, 2022 was affirmed by the Hon’ble Division Bench vide order dated 1st December, 2022 and the review petition of the present petitioner was subsequently dismissed for default. Therefore the order of the Pradhan-in-charge dated 9th November, 2015 is found to be subsisting as on date and the same has not been interdicted by the coordinate Bench while passing order dated 13th July, 2022 and subsequently by the Hon’ble Division Bench while dismissing the appeal vide order dated 1st December, 2022.

In view of aforesaid facts this Court does not find merit in the present writ petition and the same

stands dismissed.

Copies of the order dated 13th July, 2022 passed by the coordinate Bench on the writ petition being WPA 13763 of 2021, order dated 1st December, 2022 passed by the Division Bench and the order dated 14th June, 2023 also passed by the Hon'ble Division Bench are taken on record.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)