

W.P.A. 33145 of 2014

**Kabita Bhaumik
Vs.
The State of West Bengal & Ors.**

Mr. Debashis Saha
Ms. Dipika Basu
...for the petitioner

Mr. Lalit Mohan Mamata
Mr. Rudranil De
...for the State

Md. Sarwar Jahan
Mr. Asraf Mondal
...for the respondent nos. 10 and 11

The writ petition was taken up for consideration previously on 19th September, 2023 when no one appeared for the Karimpur-II, Gram Panchayat authorities which led this Court to pass an order directing the learned advocate representing the petitioner to serve notice upon the non appearing respondents with a rider that in spite of notice if no one represents the parties, in that event, writ petition shall be taken up for final consideration in absence of those parties.

Writ petitioner complains of illegal construction at the instance of respondent nos. 10 and 11. Parties are represented by learned advocates excepting the authorities of Karimpur-II, Gram Panchayat, District-Nadia being respondent nos. 6, 7 and 8 though service of notice of this writ petition have been effected upon them,

an affidavit-of-service is filed today on behalf of the petitioner which is taken on record.

During course of hearing learned advocate representing the petitioner has drawn attention of this Court to the complaint made by the petitioner dated 20th October, 2014 addressed to Pradhan, Karimpur-II, Gram Panchayat being respondent no. 7 wherein it has been alleged that private parties being respondent nos. 10 and 11 made illegal construction adjacent to the premises of the petitioner situated at Mouza 6 Karimpur 187/1094, Hal 1013 District-Nadia. Based on such complaint dated 20th October, 2014, an order was passed by the respondent no. 7 wherein the said respondent no. 7 came to the conclusion that the alleged construction made by the respondent nos. 10 and 11 was without any sanctioned plan. However, no final decision was taken with regard to the fate of the construction made by the respondent nos. 10 and 11 and the matter was referred to the higher administrative authorities for taking final decision. Such decision of the respondent no. 7 is at page 29 of the writ petition.

An attempt has been made by the learned advocate representing the respondent nos. 10 and 11 to impress upon the Court that the issue has already been dropped vide order dated 18th February, 2015 passed by the concerned Sub-Divisional Officer in a proceeding under Section 145 of Cr.P.C. Another writing of the respondent

no. 7 dated 3rd February, 2015 has also been placed before this Court which is addressed to the Sub-Divisional Officer, Tehatta wherefrom it appears that the contrary decision was taken by the respondent no. 7 with regard to the fate of the construction made by the respondent nos. 10 and 11 in consideration of pendency of the present writ petition before the High Court.

It has been submitted on behalf of respondent nos. 10 and 11 that the decision was taken by the respondent no. 7 on 21st October, 2014 not in presence of the respondent nos. 10 and 11, the said decision of the respondent no. 7 may not be given effect to.

On perusal of the decision of the respondent no. 7 dated 21st October, 2014 it also transpires that with regard to fate of the illegal construction as alleged by the petitioner no final decision has been taken rather it was decided that the issue would be referred to the higher administrative authorities for taking final decision.

This Court is not impressed with the contention made on behalf of the respondent nos. 10 and 11 that vide order dated 18th February, 2015 passed by the concerned Sub-Divisional Officer, Tehatta the proceeding is dropped since the said order dated 18th February, 2015 was passed by the Sub-Divisional Officer in a proceeding under Section 145 of Cr. P.C. and the same does not determine the validity and legality of the construction made by the respondent nos. 10 and 11.

However, learned advocate representing the petitioner and respondent nos. 10 and 11 have jointly submitted that height of the premises where alleged unauthorized construction has been made is not greater than 6.5. meter. Therefore, according to them, the issue needs to be decided by the Pradhan, Karimpur-II, Gram Panchayat being respondent no. 7.

Accordingly, Pradhan, Karimpur-II, Gram Panchayat, District-Nadia is directed to take decision on the complaint of the petitioner which is at page 27 of the writ petition dated 20th October, 2014 independently after granting opportunity of hearing to the petitioner and respondent nos. 10 and 11. Seven day's notice shall be given to the parties in order to grant them opportunity to make deliberation before the respondent no. 7 on a particular date. In spite of receipt of notice if any of the parties remain absent it will be open to the respondent no. 7 to take final decision on the complaint of the petitioner unless unavoidable circumstances are shown. Such decision with cogent reasons shall be taken within 12 (twelve) weeks from the date of communication of this order by the parties.

The learned advocate representing the State-respondents is directed to communicate this order to the respondent no. 7 on obtaining server copy of the order from the official *website* of this Court within 10 (ten)

days from date. Other parties are also directed to communicate this order immediately.

However, it is made clear that respondent no. 7 while taking decision in terms of the above direction of the Court shall not be influenced by the decision of the Sub-Divisional Officer dated 18th February, 2015 passed in Section 145 Cr.P.C. proceeding and order dated 3rd February, 2015 of the respondent no. 7. The order dated 3rd February, 2015 passed by the respondent no. 7 stands set aside.

Copies of the order dated 3rd February, 2015 of the respondent no. 7 and the copies of the orders dated 22nd December, 2014 and 18th February, 2015 passed by the concerned Sub-Divisional Officer in Section 145 Cr.P.C. proceeding are taken on record.

With the aforesaid directions, the writ petition stands disposed of.

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.)