

28-08-2023
Court No.2
Sh/13.

**In The High Court At Calcutta
Jalpaiguri Circuit Bench**

W.PA. 1540 of 2023

Joseph Chakraborty
-Vs-
The State of West Bengal & Ors..

Mr. Marjit Sarkar,
Mr. Pritam Roy,
Ms. Sunayna Prasad.
..For the Petitioner.

Mr. Subir Kumar Saha,
Mr. Pretom Das.

.. For the State.

Mr. Amales Roy,
Mr. Deborshi Dhar.

For the respondent no.4.

Affidavit-of-service, filed in Court, is taken on record.

The petitioner claimed to be the owner of a piece and parcel of land stated in detail at paragraph 1 of the writ petition.

The private respondent no.4, according to the petitioner, is the owner of the adjacent land thereto. The private respondent no. 4 allegedly has carried out unauthorized and illegal construction on his own land and in the process the petitioner alleges that the said private respondent no.4 was trying to encroach upon the portion of the petitioner's land.

Mr. Pritam Roy, learned counsel for the petitioner referring to a representation dated April 17, 2023, **Annexure P-3 at page 14 of the writ petition** submits that, despite the said representation

was submitted before the respondent no.2, no attention has been paid thereto. He also refers to an application submitted under the **Provisions of the Right to Information Act, 2005** dated May 31, 2023 **Annexure P-8 at page 21** to the writ petition and submitted that the same was replied to on June 9, 2023 along with necessary enquiry report **Annexure P-9 at Page29** to the writ petition.

Learned counsel for the petitioner submits that the Statutory Authority has failed to take steps for approval or demolition of the unauthorised illegal construction allegedly carried out by respondent no. 4. He at the threshold denied and disputed the allegations of the petitioner. He submits that the respondent no.4 has carried out the construction and erection of the dwelling house in strict compliance of the statutory provision and there was no deviation. Therefore, this writ petition is totally misconceived and should be dismissed.

Mr. Subir Kumar Saha, learned Addl. Government Pleader appears for the State.

After considering the rival submissions made on behalf of the parties and after considering the materials on record, it appears to this Court that, pursuant to **Sub-rule 3 to Rule 33 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 (in short, the said Panchayat Rule) Prodhan** of the relevant Gram Panchayet, namely, **Champashari** Gram Panchayet is the Statutory authority to look into the issue.

In view of the above, the petitioner shall be at liberty to submit a representation before the jurisdictional Pradhan positively within a period of two weeks from date **but the same shall not travel beyond the scope of the content of the representation dated April 17, 2023 Annexure P-3 at page 14 to the writ petition.**

In the event, such representation is made the jurisdictional Pradhan after issuing a prior hearing notice of at least 7 days to the petitioner and the respondent no.4 shall decide the issue after granting them an opportunity of hearing and pass its reasoned order in accordance with law. The jurisdictional Pradhan to his wisdom shall be free to carry out necessary physical inspection if it requires to do so.

It is made clear that, this Court has not gone into the merits of the claim of the petitioner or the merits of the contention raised on behalf of the respondent no.4 before this Court. The petitioner and the respondent no.4 shall be at liberty to urge whatever points they wish to urge before the jurisdictional Pradhan but the same shall not be beyond the scope of the said representation dated **April 17, 2023 at page 14 to the writ petition.**

The entire exercise as directed above shall be carried out and completed by the jurisdictional Pradhan positively within a period of six weeks from the date of the representation, if any, received by the Pradhan and the Pradhan shall communicate his reasoned order to the petitioner and the respondent

no.4 within a further period of two weeks from the date of the reasoned order to be passed.

It is further made clear that, while considering the issue if the Pradhan finds any structure or construction made in deviation and/or violation of the Statutory restriction and rules, the Pradhan shall take immediate consequential steps strictly in accordance with law positively within a period of two weeks from the date of communication of the said reasoned order to the petitioner and the respondent no.4.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

On the above terms, this writ petition being **WPA 1540 of 2023** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(ANIRUDDHA ROY, J.)