

Court No. 2
18.7.2024
(Item No. 81)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side
W.P.A. 5209 of 2020

Mst. Salehar Begum (Hazi)
VS
The State of West Bengal & Ors.

Mr. Ziaul Islam
.... For the petitioner
Mr. Susanta Pal
Mr. Tapas Ballav Mandal
.... For the State
Mr. Sarwar Jahan
Md. Ashraful Huq
Ms. Tapati Sarkar
... for respondent No. 5

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

On the prayer of Mr. Ziaul Islam, learned advocate appearing for the petitioner, leave is granted to the petitioner to file supplementary affidavit. Supplementary affidavit filed in Court today, is taken on record. Copy has been served upon the private respondents.

Mr. Sarwar Jahan, learned counsel appears for private respondent No. 5.

Mr. Susanta Pal, learned State advocate appears for respondent Nos. 1, 2 and 4.

The Panchayat and its Pradhan are not represented, despite notice. The law presumes that, they do not intend to defend this writ petition.

The petitioner complains of an alleged illegal and unauthorized construction on the subject piece of

land at the behest of the private respondent No. 5. The petitioner submits that, a representation dated **July 2, 2019, Annexure-P-5 at page 24** to the writ petition was submitted before the Pradhan of the concerned Panchayat and the same has not yet been disposed of. Referring to **annexure P-7 at page 6** to the supplementary affidavit learned counsel for the petitioner submits that, a reply to the requisition made under **Right to Information Act, 2005** the Pradhan informed that, the alleged structure was caused without obtaining any approved building plan from the Panchayat. The private respondent did not apply for any building plan.

The learned advocate appearing for the private respondent has denied and disputed the submissions made on behalf of the petitioner. He submits that, the construction as alleged was caused in the year 1987 and the relevant regulation came in the year 2004.

After considering the rival contentions of the parties and upon perusal of the materials on record, the respondent No. 3, the Pradhan of the concerned Panchayat is directed upon issuing a prior notice to the petitioner and the private respondent No. 5 shall cause a physical inspection of the alleged unauthorized and illegal construction and then after giving them an opportunity of hearing to the petitioner and the private respondent shall dispose of the said

representation dated **July 2, 2019**, as referred to above, by passing a reasoned order in accordance with law.

The entire exercise as directed above, shall be carried out and completed by the Pradhan of the concerned Panchayat positively within a period of **six weeks** from the date of communication of this order. The Pradhan then shall communicate the reasoned order to the petitioner and the private respondent positively within a further period of **two weeks** from the date of the said reasoned order to be passed.

It is made clear that, this Court has not gone into the merits of the rival claims of the parties. The petitioner and the private respondent shall be at liberty to urge whatever points they wish to urge by relying upon whatever records and documents they wish to rely upon before the Pradhan of the concerned Panchayat but the same shall not travel beyond the scope of the alleged unauthorized and illegal construction.

In the event, the reasoned order confirms the alleged unauthorized and illegal construction, the Pradhan of the concerned Panchayat positively within a period of **seven days** from the date of the communication of the said reasoned order to the parties shall transmit the same and refer the matter before the jurisdictional **Sub Divisional Officer** in

terms of **Sub Section (5) to Section 23** of the **West Bengal Panchayat Act, 1973**.

The jurisdictional **Sub Divisional Officer** then shall take all necessary and consequential steps to give an immediate effect to the said reasoned order, without any delay expeditiously in accordance with law.

It is made clear that, this order shall not create any right or equity in favour of the petitioner, if the petitioner is not eligible to receive his claim in terms of their representation with regard to the alleged unauthorized and illegal construction.

The petitioner shall serve a copy of this order upon the jurisdictional **Block Development Officer** who shall ensure that, the direction of this Court is carried out and complied with by the Pradhan of the concerned Panchayat.

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

With the above observations and directions this writ petition, **WPA 5209 of 2020** stands disposed of, without any order as to costs.

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

(Aniruddha Roy, J.)