

16.04.2024
Item No.07
Court No.6.
S. De

**M.A.T. 499 of 2024
With
I.A. No.CAN/1/2024
Mira Patra & Anr.
Vs
The State of West Bengal & Ors.**

Mr. Prantick Ghosh,
Mr. Prasad Bhattacharyya,
...for the appellant.

Mr. Sadhan Kr. Halder,
Mr. S. Roy, ...for the State.

Ms. Sneha Dutta,
Mr. Soumendranath Ganguly,
...for the private respondent.

Ms. Mekhla Sinha,
Ms. Malabika Roy Dey,
... for the Howrah Zilla Parishad.

By consent of the parties, the appeal and the
connected application are taken up together for
hearing.

A judgment and order dated March 5, 2024,
whereby the writ petition of the appellants herein
being WPA 26120 of 2023, was dismissed by a learned
Judge of this Court, is the subject matter of challenge
in this appeal filed by the writ petitioners.

The writ petitioners approached the learned
Single Judge with the complaint that the private
respondent has raised construction contrary to the
Panchayat Building Rules. It was submitted that an
objection/representation had been filed by the writ

petitioners before the Howrah Zilla Parishad as also before the concerned Gram Panchayat and the same is pending.

Learned advocate for the private respondent denied that any unauthorized construction was made by the private respondent or there was any infraction of the applicable building rules. Further, it was submitted that the construction is an extremely small one made on land, sold to the private respondent by the predecessor in interest of the writ petitioners.

The learned Judge dismissed the writ petition with the following observations :

“From the photographs annexed to the writ petition it appears that the construction is a small, single story structure. The private respondent has produced the money receipt issued by the Gram Panchayat in the year 2010 signed by the Secretary and the Pradhan of the Gram Panchayat accepting donation for development.

The stand of the Pradhan at a time of the collection of Development fee, as submitted by the private respondent, is that due to the very small quantum of land, the Pradhan categorically mentioned that the sanctioned plan

would not be required for raising construction thereon.

It appears from the submissions made on behalf of both the parties that the structure in question appears to be a very small one which is in place for the last 14 years. There is no sign of any new construction being made at present. It appears that the present writ petition has been filed with some vested interest. The prayer of the petitioners seeking direction upon the respondents to demolish the same cannot be allowed.

The writ petition fails and is hereby dismissed.”

Being aggrieved, the writ petitioners are before us by way of the present appeal.

We have heard learned counsel for the parties. What the private respondent says may or may not be correct. We are not inclined to go into the veracity of the stand taken by the private respondent. We are of the opinion that since a representation has been made by the appellants/writ petitioners to the Gram Panchayat, the same should be disposed of in accordance with law, observing the principle of natural justice.

Accordingly we direct the respondent nos.5 and 6 being the Sapuipara Basukathi Gram Panchayat and the Pradhan to dispose of the undated representation made by the appellants herein, copy whereof is annexed at page 26 of the stay petition, in accordance with law and applicable rules and regulations, by passing a reasoned order, within a period of eight weeks from the date of communication of this order to the said respondents, after granting opportunity of hearing to any one of the appellants and the private respondent or their authorized representatives. The decision so taken will be communicated to the concerned parties within a week from the date of the decision.

We clarify that we have not gone into the merits of the dispute between the parties. The respondent nos. 5 and 6 will take an independent decision in accordance with law. In the event the said respondents find that there is merit in the complaint lodged by the appellants herein, necessary consequential orders will be passed by the said respondents. We further clarify that the appellants and the private respondent will be at liberty to produce and rely upon such documents as they may be advised at the hearing before the respondent nos.5 and 6.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondents.

The order under appeal is set aside.

MAT 499 of 2024 is disposed of along with the application being I.A. No. CAN 1 of 2024.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)