

05 12.8.2024
Sc Ct. no.2

WPA 9564 OF 2023

Paban Halder

Vs.

The State of West Bengal & Ors.

Mr. Gourav Das
Ms. Madhumanti Das.

... For the Petitioner

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

After the upgradation of the matter a further notice dated **August 6, 2024** was also served upon the learned State counsel who is briefed in this matter and the notice was received on his behalf on **August 8, 2024**. The receipt copy of the said notice is taken on record.

Mr. Gourav Das, learned counsel appears for the petitioner. Drawing attention to an order **October 17, 2022** passed by the respondent no.6, **Annexure-P13 at page 55** to the writ petition, learned counsel Mr. Gourav Das appearing for the petitioner submits that, despite there being a specific and clear finding that, the subject construction in the writ petition was found to be illegal and unauthorized, the same has not yet been removed as the decision of the respondent no.6 has not yet been carried out.

From the decision of the respondent no.6 it appears that, respondent no.2 is the jurisdictional and

appropriate authority for removal of such unauthorized construction.

The relevant portion from the order dated **October 17, 2022** passed by the respondent no.6 is quoted below:

“Both the writ petitioner Biswajit Halder and petitioner of earlier case Paban Halder have constructed Culvert over the said canal without obtaining prior permission from the competent authority which is highly irregular and illegal. Biswajit Halder and private respondent and petitioner of earlier case Paban Halder both have also constructed shop over canal (water body) which are situated their homestead said dag no. without prior permission from the competent authority. Moreover, no such conversion of land has been made or approved by any competent authority

Opportunity given to both the petitioner & petitioner of earlier case but they failed to produce any legal and authorized documents or any evidence in support of the construction accordingly. Hence, I am in the opinion that all the constructions made by both the writ petitioner, and writ petitioner earlier case over the Dag no.560 which is classified as Khal is unauthorized and illegal. Though as per the notification no.1748-Fish/C-I/9R-03/2017 dated 20th July, 2017 the District Magistrate will act as competent authority but as per direction of Hon’ble High Court, I do express my opinion.

Any direction from Hon’ble Court or any other competent authority regarding this matter must be complied. It is directed to communicate this order to the petitioner Biswajit Halder, earlier petitioner Paban Halder and all the stakeholders within a week.”

None appears for the State respondents despite notice.

None appears for the other respondents also including the private respondent.

The petitioner has informed that, the said order of the respondent no.6 dated **October 17, 2022** has not been challenged in any manner. Thus, the parties have accepted the said order.

In view of the above, this Court is of the view that, there is no impediment as to why the said order dated **October 17, 2022** passed by the respondent no.6 shall not be effected and carried out forthwith.

Since the respondent no.2 is the appropriate authority for causing the necessary demolition of the unauthorized structure and restoration of the water body, the petitioner shall serve a copy of today's order along with a copy of the writ petition upon the respondent no.2 forthwith.

The respondent no.2 then shall take all necessary and consequential steps to give an immediate effect to the said order dated **October 17, 2022** passed by the respondent no.6 by causing removal and demolition of the unauthorised structure and by restoring the water body.

The respondent no.2 shall take all steps in accordance with law within a period of **six weeks** from the date of communication of this order.

In the event any police assistance is required, the respondent no.7 shall render all necessary assistance to the respondent no.2 upon being requested.

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

With the above observations and directions this writ petition, **WPA 9564 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.)