

12.07.2024
Item No.42
Crt.No.02
b.r.

WPA 10626 of 2023

Md. N. Eyashin Saffatul Rahaman & Anr.
-vs-
The State of West Bengal & Ors.

Mr. Mujibar Ali Naskar
Mr. Imtiaz Ahamad
.... For the petitioners.

Mr. Nabhajit Prasad Basu
Mr. Arindam Mitra
... for the State.

Mr. Saunak Mandal
.... For the Resp. nos. 8 and 9.

Mr. Sarbananda Sanyal
.... For the REsp. no. 14.

Affidavit of service is on record.

Mr. Mujibar Ali Naskar, learned counsel appears
for the petitioners.

Mr. Saunak Mandal, learned counsel appears for
the Panchayat and its Prodhan.

Mr. Arindam Mitra, learned State counsel appears
for respondent nos. 1, 12 and 13.

Learned State counsel places a police report dated
December 7, 2023 issued under the seal and signature
of **Officer-in-Charge, Salar Police Station.**

Mr. Sarbananda Sanyal, learned advocate appears
for private respondent no.14.

The petitioners complain of an unauthorized and illegal construction at the behest of the private respondent on the subject piece of land. Referring to **page-8** from the supplementary affidavit affirmed on **July 18, 2023**, the petitioners submit that a representation dated **July 7, 2023** was submitted before the **Secretary, Salar Gram Panchayat**, the same has not been considered.

Learned counsel appearing for the private respondent submits that a partition suit filed by the petitioners being **P.S. No. 412 of 2022** is pending before the learned Civil Judge (Senior Division), Kandi, Murshidabad. The prayer (**GHA**) to the plaint shows that, the petitioners/ plaintiffs also prayed a relief relating to any construction on the part of a joint property. The copy of the plaint made over to this Court, is taken on record. Learned counsel for the private respondent further submits that the construction alleged by the petitioners have been carried out in strict terms of the sanctioned plan over the existing structure on the piece of land.

Learned counsel appearing for the Panchayat and its Prodhan submits that the construction alleged by the petitioners caused at the behest of the private respondent has been done in terms of the sanctioned plan. He further points out from the representation that

the petitioners, *inter alia*, claims removal of encroachment, this is not within the domain of the Prodhan and a civil dispute.

Learned counsel for the petitioners deny and dispute the submissions made on behalf of the private respondent as well as on behalf of the Panchayat and its Prodhan. He submits that the construction alleged is in deviation of the sanctioned plan.

After considering the rival contentions of the parties and upon perusal of the materials on record, at the outset, it appears to this Court that, the Secretary of the Panchayat is not the jurisdictional authority to consider the issue relating to unauthorized construction, the jurisdiction lies with the Prodhan.

In view of the above, the petitioners shall be at liberty to submit a fresh representation before the Prodhan of the concerned Gram Panchayat within **a week** from date but the same shall not travel beyond the issue of unauthorized and illegal construction at the behest of the private respondent as alleged by the petitioners. The allegation of encroachment of land shall not be dealt with by the Prodhan. The Prodhan shall only deal with the allegation relating to alleged unauthorized and illegal construction, if any.

The Prodhan after receiving the said representation from the petitioners, if any, upon notice

to the petitioners and the private respondent shall cause a physical inspection of the alleged construction and then after affording them an opportunity of hearing shall decide the issue by passing a reasoned order in accordance with law.

The entire exercise is directed above shall be carried out and completed by the Prodhan positively within a period of **six weeks** from the date of receiving the said representation, if any to be submitted by the petitioners. The Prodhan then shall communicate its reasoned order to the petitioners 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 rival contentions of the parties are recorded above.

The petitioners and the private respondent shall be at liberty to urge what points they wish to urge by relying upon whatever records and documents they wish to rely upon before the Prodhan but the same shall not travel beyond the scope of the alleged unauthorized and illegal construction.

In the event, the reasoned order confirms the unauthorized and illegal construction, then the Prodhan positively within a period of **seven days** from the date of communication of the said reasoned order to the parties

shall transmit the same and refer matter before the jurisdictional Sub-Divisional Officer in terms of **Sub-Section 5 to Section 23 of the West Bengal Panchayat Act, 1973.**

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

It is made clear that this order shall not create any right or equity in favour of the parties, if they do not succeed to their respective contentions strictly in accordance with law.

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

The petitioners 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 Prodhan of the concerned Panchayat.

With the above observations and directions, this writ petition, **WPA 10626 of 2023** stands **disposed of**, without any order as to costs.

(Aniruddha Roy, J.)