

24.07.2024
Item No. 11
Crt.No.02
b.r.

WPA 11623 of 2024

Pratap Barai
-vs-
The State of West Bengal & Ors.

Mr. Abharatosh Majumder
Mr. Ritzu Ghosal
Mr. Sayantan Chatterjee
Mr. Anirban Ghosh
..... for the petitioner.

Mr. Chandi Charan De, Ld. A.G.P.
Mr. Anirban Sarkar
.... For the State.

Mr. Partha Sarathi Bhattacharyya
Mr. Pronojit Roy
... for the private resp. nos. 5 to 10.

Pursuant to the leave granted by the co-ordinate Bench on June 20, 2024, the Supplementary Affidavit affirmed on June 20, 2024 filed in Court today, is taken on record. Copies have already been served upon the respondents.

This writ petition has been filed at the instance of the office bearer of a **club**. The subject land, as claimed by the petitioner, is being used and under the occupation of the club for more about **50 years** and the club performs **Durgapuja** from a constructed **Durga Mandap** on the land. There is also a club house with temporary structures with tin shed, as submitted on behalf of the petitioner. The petitioner submits that the

private respondent nos. 5 to 10 who are claiming to be owners either by themselves or through their predecessors-in-interest of the piece of land are actually not the owners, because the land is a vested land.

This is the second round of writ litigation involving the alleged structures alleged to have been erected and constructed by the club. The first writ petition, **WPA No. 5581 of 2023** (for short, first writ petition) was filed by the private respondents herein being the writ petitioners therein. The relief claimed by the private respondents therein, inter alia, for demolition of the structure on the land caused at the behest of the club. By an order dated **April 18, 2023, annexure p-2 at page-28** to the writ petition, the first writ petition was disposed of. The relevant portions from the said order is quoted below:-

“ Although the question of right, title and interest of the petitioners in respect of the said plot cannot be decided by this court, assuming that the statement of the respondent nos. 7 to 9 are correct, the court deems it fit to direct the District Magistrate, Nadia, to ascertain whether the construction on the said plot had been made in accordance with the provisions of law, i.e., whether the permission had been taken from the government before such construction was made on the alleged vested land. If the District Magistrate finds that there has been encroachment on government land,

necessary steps shall be taken in accordance with law, upon hearing all parties in terms of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962.

If the District Magistrate is of the opinion that the construction have been made without any permission in terms of Section 23 of the West Bengal Panchayat Act, 1973, and the matter must be referred to the Bethuadahari-II Gram Panchayat for necessary steps in terms of Section 23(5) of he West Bengal Panchayat Act, 1973, the same shall be done.

The District Magistrate will record all findings by passing a reasoned order which shall be served upon the parties. Such exercise shall be concluded within a period of two months from the date of communication of this order.

If the District Magistrate refers the matter to the Panchayat authorities, the panchayat authorities shall act and proceed in accordance with law and take consequential steps within six weeks from such reference.

All steps shall precede an inspection of the site, in the presence of all the parties including the club and other interested parties and an opportunity of being heard shall be granted to al.

The writ petition is disposed of.”

Pursuant to the said direction of the co-ordinate Bench, the respondent no.2 had decided the issue by its impugned order dated **March 28, 2024 at page-33** to

the writ petition. The relevant portion from the said impugned decision is quoted below:-

“ that the Sub-Divisional Officer cum Sub-Divisional Magistrate, Krishnanagar, Sadar Sub-Division, Nadia is directed to take necessary steps for removal of the unauthorized encroachment with the help of the Officer –in-Charge, Nakashipara Police Station, Krishnanagar Police District. Nadia in terms of the existing provisions, U/s.23 of the Panchayat Act, 1973 within the stipulated period as mentioned in the High Court, Calcutta, passed in W.P.A. No.5581 of 2023, upon an inspection of the site in issue in the presence of all state holders the interest of the public service.

Inform to all necessary concerned.”

The instant second writ petition impugned the said decision of the respondent no.2 dated March 28, 2024.

Mr. Abharatosh Majumder, learned Senior Counsel being ably assisted by Mr. Ritzu Ghosal, learned counsel appearing for the petitioner referring to a previous order of the respondent no.2 dated **January 10, 2024 at page-37** to the writ petition submits that before deciding the issue finally and conclusively, the

respondent no.2 had made certain directions and observed as under :-

“Whereas, heard all the parties present in the said hearing, perused the writ petition, all supporting documents, i.e. the annexure “P-7”, running page no.23 and the enquiry reports of B.L. & L.R.O., Nakashipara, Nadia, vide Memo no.4059 dated 23.08.2023 together with Memo-551/BLLRO/NAK/2023, dated 22.08.2023, forwarded from the end of the S.D.O., Krishnagar, Sadar, Nadia, vide their Memo No. 1119/SS, dated 23.08.2023 were put up before the undersigned, I, being the District Magistrate, Nadia, am of the view that a fresh enquiry is to be caused from the end of Sub-Divisional Officer, Sadar, Krishnagar, Nadia with calling for a detailed report of the land in issue upon considering the following points:

- i) Weather the land in issue vested or otherwise?*
- ii) Whether there is any structure in the said land, permanent/temporary or otherwise?*
- iii) Whether any permission had been obtained from the competent authority prior to such construction as alleged regarding the land in issue?*
- iv) Whether is there any encroachment as alleged regarding the land in issue? If yes, then suggestive steps be recommended according to the provisions of the prevailing/existing laws.*

Whereas, it is ordered that:

the enquiry report will be heard in next date of hearing will be intimated in the notice and thus, the appeal stands allowed.

Hence, ;this order is modified to that extent.”

Then, Mr. Abharatosh Majumder, learned Senior Counsel submits that despite their being the direction of the **respondent no.2 on January 10, 2024**, as quoted above, whether the enquiry had been carried out in the manner and mode directed by the respondent no.2 is not within the knowledge or notice of the petitioner. Even if any enquiry has been carried out nor enquiry report has ever been furnished to the petitioner. Through the impugned order dated March 28, 2024, the respondent no.2 had decided the issue with the impugned finding that the steps for removal of unauthorized encroachment shall take place in terms of **Section 23 of the West Bengal Panchayat Act, 1973**. He submits that, the impugned decision does not reflect the fact finding discussions whereupon the said finding was arrived at by the respondent no.2 and moreover since the inspection report was not made over to the petitioner, the petitioner was not in a position to make any submission whatsoever on such fact finding observations. He submits that this is a clear breach of the elementary principle of natural justice. On this plea alone, the said impugned decision of the **respondent no.2 dated March 28, 2024** is liable to be set aside and quashed. Referring to another order dated **June 13, 2024** passed by the added **respondent no.11, annexure p-6 at page 7** to the supplementary affidavit,

learned counsel for the petitioner submits that in exercise of power under **Sub-Section (5) to Section 23 of the Panchayat Act**, the added respondent has already taken steps to cause removal/demolition of the structures on the said piece of land.

Mr. Majumder further places another order dated **July 16, 2024** passed by the added respondent fixing the date of demolition to be **July 24, 2024**. The same is also taken on record.

Mr. Majumder further submits that the club has already filed a Civil Suit being **Title Suit No. 243 of 2024** pending before the **learned Civil Judge (Senior Division), 2nd Court, Krishnagar, Nadia** against both the State and the private respondents, *inter alia*, praying for the following relief :-

“i. That a decree of permanent injunction be passed in favour of the plaintiffs against the defendants restraining them from disturbing the peaceful possession of the plaintiffs in the suit property and from dispossessing them from the suit property and from demolishing the Durga Mandir and club house situated over the suit property in any way.”

Mr. Majumder further submits that the structures alleged being old more than 50 years no step can be taken in exercise of power under **Section 23 of**

the Panchayat Act as the said provision is restricted for the new structures.

By an order dated **June 25, 2024**, the ad interim injunction prayer for in the said title suit was considered and refused by the jurisdictional learned Civil Judge. Copy of the plaint and the said order are also taken on record.

The petitioner/club being aggrieved by the said order dated June 25, 2024 preferred an appeal which is pending before the Hon'ble Division Bench.

Mr. Chandi Charan De, learned Additional Government Pleader appearing for respondent nos. 1 to 4 submits that the impugned order dated **March 28, 2024** passed by the respondent no.2 was strictly in accordance with the direction made by the co-ordinate Bench dated **April 18, 2023**.

Mr. Partha Sarathi Bhattacharyya, learned Senior counsel appearing for private respondent nos. 5 to 10 submits that the said impugned order passed by the respondent no.2 was strictly in accordance with the order dated April 18, 2024 passed by the co-ordinate Bench . He further submits that the private respondents have valid right, title and interest over the piece of land.

He further submits that the club is in unauthorized occupation of their land and constructed illegal structures there upon. Whether the structures on

the subject land are old or if old by how many years, are required to be ascertained.

Mr. Bhattacharyya, learned Senior counsel further submits that under which provision of law whether under the **Panchayat Act** or under the **West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962**, the issue has to be dealt with is also required to ascertain. He submits that the writ petition is devoid of any merit and liable to be dismissed.

After considering the rival contentions of the parties and upon perusal of the materials on record, at the threshold, it appears to this Court that the order of the co-ordinate Bench dated **April 18, 2023** has not been appealed against by either of the parties. The said order was passed in presence of the parties to the previous writ petition, who are also the parties in the instant writ petition. The order was passed in the writ petition filed by the private respondents herein. The private respondents have accepted the said order and the order has been acted upon.

The order of the co-ordinate Bench specifically directed that if an encroachment is there on a Government land then only **1962 Act** will operate and in the event there is a simplicitor illegal and unauthorized construction then the Panchayat Act will

operate. Therefore, the contention of the private respondents before this Court today that which act shall govern will have no significance and stands rejected.

In the light of the said co-ordinate Bench direction, it was the duty of the respondent no.2 at the threshold to arrive at a finding whether the subject plot of land has already been vested and is a Government land or not and then the second stage of finding whether there was any encroachment upon such Government land. On a careful scrutiny of the said impugned order dated **March 28, 2024**, this Court is of the firm view that, no such finding with reasons are available in the impugned order.

In the event, the respondent no.2 was of the opinion that the land was not a Government land or a vested land but the structures alleged are unauthorized or illegal thereupon, then only the **Panchayat Act** would have governed the field.

In absence of the finding of the respondent no.2 that whether the land is a Government land or not and then whether any encroachment is there on the Government land or not, the impugned decision of the respondent no.2 was clearly not in strict compliance of the direction of the co-ordinate Bench dated **April 18, 2023**. On this ground alone, the impugned order dated **March 28, 2024** stands vitiated and the decision

making process of the respondent no.2 suffers from serious infirmity.

The impugned order does not show that a proper enquiry was carried out following the direction of the respondent no.2 dated **January 10, 2024 at page-37** to the writ petition. The impugned order does not show any enquiry, if at all has been carried out, the report was furnished to the petitioner. No material has been produced before this Court today to suggest that the enquiry has taken place and the enquiry report was furnished to the petitioner. Without furnishing such enquiry report to the petitioner as also the other parties to the proceeding before the respondent no.2, the impugned order dated **March 28, 2024** was passed, which is clearly in violation of elementary principle of natural justice.

In view of the foregoing discussions and reasons, the impugned order dated **March 28, 2024** passed by the **respondent no.2, annexure p-4 at page-33** to the writ petition stands **set aside and quashed**.

The respondent no.2 shall **re-visit** the issue in strict compliance of the direction of the co-ordinate Bench dated April 18, 2023. Before proceeding further, the respondent no.2 first shall ensure that his direction dated **January 10, 2024 at page-37** to the writ petition relating to cause the necessary enquiry is strictly

complied with and the enquiry report has been furnished to the petitioner and the private respondents.

While conducting the said inspection/enquiry, the appropriate authority and/or expert shall also assess the **age of the structures**, namely, Durga Mandap and the temporary club house constructed with the tin-shade and shall include the same in its report which shall be placed before the respondent no.2.

After completion of the said inspection and the report being furnished to the petitioner and the private respondents, the **respondent no.2** shall grant opportunity of hearing to the petitioner and the private respondents and then shall decide the issue by passing a reasoned order in accordance with law.

The entire exercise as directed above shall be carried out and completed by the respondent no.2 positively within a period of **fourteen weeks** from the date of communication of this order.

It is made clear that, since the parent decision of the **respondent no.2 dated March 28, 2024** stands set and quashed, all consequential directions touching the issue stands **set aside** and **quashed**.

It is made clear that this Court has not gone into the merits of the rival contentions raised before this Court by the petitioner and the private respondents, the parties shall be free to urge their respective points but

within the scope of the direction made by the coordinate Bench in its order dated **April 18, 2023** and strictly following directions made therein.

Since today is the date fixed for demolition and this order has been passed in presence of the learned counsel representing all the parties to this writ petition, the learned advocates for the respective parties shall immediately communicate to their respective clients the gist of this order and the clients shall act thereupon.

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 11623 of 2024** stands **disposed of**, without any order as to costs.

(Aniruddha Roy, J.)