

Court No. 2
11.6.2024
(Item No. ML-32)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 12698 of 2023

Sitaram Barasia
VS
The State of West Bengal & Ors.

Mr. Tapas Kumar Bhattacharya
Mr. Aviroop Bhattacharya
.... For the petitioner
Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee
.... For the State
Mr. Parashar Baidya
Mr. Priyankar Ganguly
Ms. Shalini Bairagi
.... For respondent No. 9

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

The petitioner complains of unauthorized and
illegal construction caused by the private respondent
No. 9 on the subject piece of land.

This is the second round of writ litigation. In
the first round, the petitioner's writ petition **WPA No.**
12404 of 2022 was disposed of by a co-ordinate
Bench by its order dated **September 5, 2022,**
Annexure P-4 at **page 23** to the writ petition. The co-
ordinate Bench had fixed the procedure and modality
to be adopted by the statutory authority to dispose of
the grievance of the petitioner. The specific procedure
and modality laid down by the co-ordinate Bench
would appear from **sub-paragraphs (a) to (f)** at **page**
27 to the writ petition.

Mr. Tapas Kumar Bhattacharya, learned counsel appearing for the writ petitioner submits that, in strict compliance of the said direction of the co-ordinate Bench the respondent No. 7, the Pradhan of the concerned Panchayat, passed its reasoned order dated **February 13, 2023, Annexure P-5** at **page 29** to the writ petition. From the said reasoned order it appears that, the illegal and unauthorized construction complained of by the petitioner was established. Learned counsel for the petitioner in the light of the above submits that, there after the Pradhan has not done its statutory duty by referring the matter before the Sub-divisional Officer for demolition of the unauthorized and illegal structure in accordance with law.

Hence, this writ petition.

Mr. Parashar Baidya, learned counsel appearing for respondent No. 9, the private respondent submits that, on a plain reading of the said reasoned order dated **February 13, 2023** it is evident that, the same was not passed by the Pradhan in strict compliance of the directions made by the co-ordinate Bench and inconformity with the procedure and modality laid down by it in its order dated **September 5, 2023**. He submits that, no sketch map has been attached or prepared by the Pradhan before coming to a conclusion that there was an alleged unauthorized and illegal construction. Opportunity of

hearing was not granted to the private respondent. The relevant parties were not granted opportunity to adduce evidence in terms of the procedure laid down by the co-ordinate Bench. For all those reasons learned counsel appearing for the private respondent No. 9 submits this reasoned order dated **February 13, 2023** is required to be quashed and set aside as there is a serious procedural infirmity on the face of it. Therefore, writ petition is not maintainable and should be dismissed.

Per contra, Mr. Bhattacharya, learned counsel for the petitioner has denied and disputed the submissions made on behalf of the private respondent. He further submits that, private respondent has not challenged the said reasoned order dated **February 13, 2023** and if the same is quashed he will get the relief in the writ petition filed by the petitioner which is not permitted by the law.

Mr. Arindam Chattopadhyay, learned State counsel appears for respondent Nos. 1 to 5 and 8.

After considering the submissions made on behalf of the parties and upon perusal of the materials on record this Court at the outset reiterates the settled law with regard to the authority of a Constitutional Court in exercising of its power under **Article 226 of the Constitution of India** while scrutinizing the reasoned order in the instant case.

This Constitutional Court in exercise of its power under **Article 226 of the Constitution of India** has a limited authority to assess the said reasoned order. It can only intervene when there is a glaring perversity on the face of the reasoned order and then there is a procedural infirmity on the face of it.

On a close scrutiny of the said reasoned order dated **February 13, 2023** it appears to this Court that, the modality and procedure fixed by the co-ordinate Bench in the said order dated **September 5, 2022** has not been complied with. The record disclosed through the writ petition and the reasoned order does not say that despite opportunity being granted, the private respondent had not participated in the hearing or the private respondent refused to adduce any evidence in terms of the direction made by the co-ordinate Bench. There is no sketch map attached with the said reasoned order. The reasonable presumption is that no such sketch map was prepared by the Pradhan while inspecting the property though the inspection of the property took place in presence of the parties. These are the infirmities glaring on the face of the said reasoned order.

A Writ Court in exercise of its power under judicial review, if finds there is a glaring procedural

infirmity on the face of the reasoned order it has ample authority to quash the said on any terms.

In view of the foregoing reasons and discussions, this Court is convinced and is of the firm view that, this reasoned order dated **February 13, 2023, Annexure P-5** at **page 29** to the writ petition cannot sustain in law and accordingly the same stands **set aside** and **quashed**.

The respondent No. 7, the Pradhan of the concerned Panchayat is directed to re-visit the issue strictly in terms of the directions and guidelines framed by the co-ordinate Bench in its order dated **September 5, 2022** as particularly would appear from **page 27** to the writ petition **clauses (a) to (f)** therein and then shall pass its reasoned order.

It is needless to mention that, the same Engineer who had caused the physical inspection of the property shall cause the same in strict compliance of the direction of the co-ordinate Bench.

The respondent No. 7 shall carry out and complete the entire exercise as directed above strictly in terms of the direction of the co-ordinate Bench as referred to above positively within a period of **seven weeks** from the date of communication of this order.

If the finding shows there is any illegal or unauthorized construction, the respondent No. 7 then positively within **a week** from the date of passing the said reasoned order shall refer the matter before the

respondent No. 4, in terms of **sub-Section 5 of Section 23** of the **West Bengal Panchayat Act, 1973**.

The respondent No. 4 in turn shall carry out his statutory obligation then positively within a period of **six weeks** from the date of such reference being received from the Pradhan. This order is and shall be treated to be mandatory on the part of the parties to the writ petition.

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 **W.P.A 12698 of 2023** stands **disposed of**, without any order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)