

IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

Appellate Side

Present :

The Hon'ble Justice Shampa Dutt (Paul)

**WPA 13251 of 2023
(Assigned)**

**Shyamapada Darhi
Vs.
The Union of India & Ors.**

For the Petitioner : Ms. Susmita Saha Dutta,
Mr. Md. H. Zaman,
Mr. Md. Z. Zaman.

For the Union of India : Mr. Brajesh Jha,
Mr. Shaunak Ghosh.

For the Respondent No. 10 : Mr. Dip Jyoti Chakraborty.

**For the Respondent
Nos. 11 to 13** : Ms. Poulami Chakraborty.

For the State : Mr. Pankaj Halder,
Mr. Sanatan Panja.

Hearing concluded on : 25.06.2024

Judgment on : 09.07.2024

Shampa Dutt (Paul) , J.

1. The present writ petition under Article 226 of the Constitution of India has been preferred praying for the following reliefs:-

- a) *A writ in the nature of Mandamus directing the respondents and their men and agents to take all appropriate steps against the sanction illegally granted to the private respondents under the PMAY(G) Scheme on the land in question;*
- b) *A writ in the nature of Mandamus directing the respondents and their men and agents to take appropriate steps to demolish the illegal and unauthorized construction made by the private respondents on the land in question;*
- c) *A writ of Mandamus commending the respondent to dispose of the representation of the petitioner dated 20.04.2023 being Annexure "P-9" herein;*

2. The facts in brief as stated by the petitioner is that:-

- i) *That 80 decimals of the land under Mouza-Maheshpur, J.L No.152, L.R. Dag No.666, L.R. Khatian No.80 area of land 122.25 decimals, L.R. Khatian No.105/1 area of land 80 decimals, L.R. Khatian No.746 area of land 177 decimals total area of land 379.25 decimals, P.S Basanti, South 24 Parganas, originally belonged to one Gurupada Kayal. Gurupada Kayal sold and transferred 40 decimals out of 80 decimals to the applicant and Nirapada Darhi vide a registered Deed of Sale No.1485 in the year 1975.*
- ii) *Gurupada Kayal sold and transferred the remaining 40 decimals out of 80 decimals to Tarapada Darhi and Bishnupada Darhi vide a registered Deed of Sale vide*

no.1484 in the year of 1975. Thus, the applicant and his three brothers namely Nirapada Darhi, Tarapada Darhi and Bishnupada Darhi became the owners of 80 decimals of the land under Khatian No.105/1 of the said plot.

- iii) That 169 decimals of the said plot no.666 under Khatian no.80 originally belonged to the petitioner's father namely Kalipada Das Dari. After his demise, the 169 decimals of the land under Khatian No.80 were inherited by the petitioner and his aforementioned three brothers and they became the owners.
- iv) The petitioner is the present recorded owner of 177 decimals of the said plot no.666 under Khatian No.746.
- v) The petitioner states that the three brothers of the petitioner namely Nirapada Darhi, Tarapada Darhi and Bishnupada Darhi executed a power of attorney being no.19 in the year 2017 in the name of your petitioner for their respective shares in the aforesaid plot under Khatian No.105/1 and also for 80 decimals in the plot under Khatian No.80.
- vi) On the basis of the aforementioned power of attorney, the petitioner is lawfully entitled to have the demarcation of 80 decimals (under Khatian no.105/1) + 122.25 decimals (under Khatian no.80) + 177 decimals (under Khatian no.746), thus total 379.25 decimals of land in dag no.666.
- vii) The petitioner states that the private respondents have been constructing illegal structures over the said land. The private respondents did not apply for the conversion of the nature and character of the land as is required under the West Bengal Land Reforms Act and he also did not obtain any permission or sanction from the Bharatgarh Panchayat as mandated under Section 23 of the West Bengal Panchayat Act, 1973.
- viii) The petitioner made several representations to all concerned authorities, and thereafter, the petitioner filed a writ petition being WPA No.6558 of 2021, wherein the Hon'ble Court vide order dated 08.03.2022 directed the Prodhan of Bharatgarh Panchayat to adjudicate the petitioner's complaint.
- ix) The Prodhan of Bharatgarh Gram Panchayat conducted an enquiry of the concerned plot and passed a reasoned order dated 17.11.2022 and directed the private

respondents to stop the construction work and demolish the existing construction work at their own cost and vacate the suit premises immediately.

- x) The private respondent no.1 filed a writ petition being WPA No.25290 of 2022. The Hon'ble Court vide order dated 14.12.2022 directed the Sub Divisional Officer, Canning to decide the matter, and ensure that the private respondent (petitioner in WPA No.25290 of 2022) has constructed the aforementioned structure under the PMAY(G) scheme as claimed by the private respondents. **Furthermore, the Hon'ble Court granted permission to the petitioner to approach the appropriate authority challenging the grant of sanction or benefit under the PMAY(G) scheme to the private respondent.**
- xi) It is further stated by the petitioner that the Framework of Implementation (FFI) of PMAY-G, Annexure-I issued by the Government of India lays down the exclusion process and parameters which shall automatically exclude a household from receiving the benefits under the PMAY(G) scheme. The parameters in the aforementioned Annexure-I states that any household having a motorized two/three/four wheeler/fishing boat shall be automatically excluded from receiving the benefits under the PMAY(G) Scheme.
- xii) That the household of the private respondents have a motorized two wheeler having registration no.96Q 9137 which is registered in the name of the private respondent no.10. Hence, the household of the private respondents should have been automatically excluded from receiving the benefits under the PMAY(G) scheme, as can be observed from the listed parameters issued by the Government of India.
- xiii) On 20.01.2023, in the hearing before the Sub Divisional Officer, Canning, the Secretary-in-Charge, Bharatgarh Panchayat submitted that sanction was granted to Madhobi Mondal and Subhas Mondal under PMAY(G) scheme, and on the basis of such scheme, the house of the private respondents had been constructed. On the ground that the house was constructed under the PMAY(G) scheme, the Sub Divisional Officer, Canning decided to not proceed with the earlier demolition order

dated 17.11.2022 issued by Bharatgarh Gram Panchayat and disposed of the case.

- xiv) It is stated by the petitioner that since the household of the private respondents have illegally and wrongfully obtained the benefit under the scheme, the construction of the house made by them is also illegal and unauthorized.*
- xv) It is further stated that the Hon'ble High Court in WPA No.25290 of 2022 vide order dated 14.12.2022 has explicitly mentioned that the petitioner shall have the right to approach the appropriate authority to challenge the sanction granted to the opposite party under the PMAY(G) scheme. On the basis of such order, your petitioner had submitted representations dated 20.04.2023 to the appropriate authorities and urged the authorities to consider the entire facts of the case, the relevant laws, guidelines and thereafter take an appropriate steps in accordance with law.*

- 3. It is stated by the petitioner** that the household of the private respondents falls within the exemption parameter as stated by the Framework for Implementation (FFI) of PMAY-G.
- 4.** Hence, they are not at all entitled to receive any benefit under the Scheme and if they have received any benefit, it is because all parameters were not appropriately inspected which is absolutely illegal, malafide and bad in law.
- 5.** Since, the household of the private respondents have illegally and wrongfully obtained the benefit under the scheme, the construction of the house made by them is also illegal and unauthorized.
- 6.** It is further stated by the petitioner that at the time of hearing before the Sub Divisional Officer, Canning, the private respondents produced a possession certificate issued by the B.L & L.R.O, Basanti, however, such certificate was never issued by the office,

and it is a forged and fabricated document. The B.L.& L.R.O Basanti did not verify the authenticity of the said certificate from his office records.

7. That the respondents are violating the petitioner's fundamental right under Article 14, 19 and 21 of the Constitution of India.

8. From the materials on record, it is evident that:-

- a) In WPA No.25290 of 2022 read with WPA 6558 of 2021, Rash Behari Mondal & Ors. Vs. The State of West Bengal & Ors., the Sub Divisional Officer, Canning, South 24 Parganas, **as directed by the High Court**, on hearing passed an order dated 11.01.2023, relevant parts of which are reproduced here:-

"..... According to the Ld advocate of the petitioner, in the case WPA no. 6558 of 2021 and the OP of the Case WPA No. 25290 of 2022, that Shri Shyamapada Darhi is the recorded owner of the suit land on which Shri Rash Behari Mondal and Shri Uttam Kayal had started an illegal construction from the year 2017. Thereafter, on 08.03.2022, Hon'ble High Court, Calcutta in the case WPA No. 6558 of 2021 directed the Pradhan to adjudicate the complaint of Shri Darhi.

Hence, Bharatgarh Gram Panchayat conducted an enquiry of the concerned plot and passed a reasoned order dated 17.11.2022 with a direction that Shri Rashbehari Mondal and Shri Uttam Kayal should not restart the construction work further on the suit land and demolish the existing construction work with their own cost and vacate the suit place immediately.

On the other side written statement of the Ld advocate of the O.Ps, in the case WPA no. 6558 of 2021 and the Petitioners of the Case WPA No. 25290 of 2022 claimed that Shri Rash Behari Mondal and Shri Uttam Kayal have the possession certificate issued from BL&LRO, Basanti, of the suit plot which is Khatiyon No. 01 in Dag no. 666 and

hence is not a Rayati Land. The Ld. Advocate also claimed that her clients received the mount of PMAY (G) and completed the house in due time.

However, the Secretary in Charge, Bharatgarh G.P, admitted that the houses under PMAY(G), were sanctioned and allotted jointly to Smt. Madhobi Mondal, the Daughter in law and Shri Subhas Mondal, son of Shri Rash Behari Mondal and jointly to Smt. Chhaya Rani Kayal, the Wife of Shri Uttam Kayal and himself. After checking their Aadhar Card, Epic Card and Bank Account number, it was found that they received a fund of PMAY(G) in three installments and completed the house in due time. The Secretary, submitted the requisites documents received for the same.

In view of the above circumstances, it shall be concluded that the said constructions by Shri Rash Behari Mondal & his family and Shri Uttam Kayal & his family were under the PMAY(G) Scheme and hence the case is disposed off.

**Sd/-
Sub-Divisional Officer
Canning, South 24 Parganas”**

- b) It is also the case of the petitioner that a representation dated 19.04.2023 submitted by the petitioner herein is still pending. In the said petition, the petitioner has prayed before various authorities for necessary directions and steps to grant relief.
- c) The principal grievance of the petitioner is that he is the recorded owner of the land on which admittedly the private respondents have made constructions with the funds sanctioned under the PMAY(G) Scheme.
- d) It is further stated that as the land did not meet the requirements as required under the Scheme, the sanction

of the fund is illegal and the structure on it constructed with the said fund is to be demolished.

- e) From the order of the Sub Divisional Officer, Canning dated 11.01.2023, it appears that the persons who constructed on the disputed land have the possession certificate issued by the BL& LRO, Basanti in respect of the (disputed) suit plot.

f) Clause 5.2.1, under the PMAY –G reads as follows:-

“5.2.1 Before issue of Sanction Order the BDO or any block level official authorized by the State Government shall capture through “AwaasApp” the geo-referenced photograph of the house where the beneficiary is currently living, followed by a geo-tagged photograph of the vacant land on which the beneficiary proposes to construct the house and upload it in AwaasSoft. In case beneficiary wishes to construct PMAY-G house on the plot where he/she currently resides, it should be clearly indicated.”

- 9.** The said Clause 5.2.1 clearly supports the order of the SDO.
- 10. Another contention of the petitioner** is that the respondent has a motorized two wheeler and is thus is to be excluded from the said beneficial scheme as per its rules.
- 11.** A report dated 20.06.2024 to that effect has been submitted by the Pradhan, Bharatgarh Gram Panchayat to the Block Development Officer, Basanti Development Block, South 24

Parganas which was then forwarded to the Sub-Divisional Officer, Canning, South 24 Parganas on 20.06.2024.

12. The relevant extract of the letter dated 20.06.2024 is as follows:-

“..... The allegation which is raised by Shyamapada Darhi in the ongoing WPA Case No. 13251 of 2023 that "the family of Madhobi Mondal owns/possesses a motorized two-wheeler bearing registration no. WB96Q9137, which makes her ineligible for being a beneficiary under the PMAY(G) Scheme" is totally false and baseless.

The husband of Madhobi Mondal, namely Subas Mondal, S/O.Rashbehari Mondal purchased a motorized two-wheeler bearing registration no. WB96Q9137 on 14.12.2020 and that was registered by vehicle department on 25/01/2021, which is after taking the benefit of PMAY(G). Moreover, at the time of SECC survey as well as sanctioning of PMAY (G) house, the economic condition of family of Madhobi Mondal satisfied all criteria to be eligible as a PMAY (G) beneficiary.

Hence this Gram Panchayat does not break any rule as per existing PMAY(G) norms.

**Sd/-
Prodhan
Bharatgarh Gram Panchayat
Basanti, South 24 Pgs”**

13. Thus, it appears that the fund was sanctioned under the said Scheme for construction of the house on a land in respect of which **the private respondents had papers relating to their possession and also that the private respondents do not fall in the ‘exclusion’ category under the scheme.**

14. As regards the dispute between the parties relating to the right, title and interest (ownership) of the land, the same is to be agitated before a civil court.

15. The pending representation dated 20.04.2023 thus has no force at this stage.

16. The writ petition is thus dismissed.

17. No order as to costs.

18. All connected application, if any, stands disposed of.

19. Interim order, if any, stands vacated.

20. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)