

12.06.2024
Ct. No. 2
Sl. No. 61
tbsr

WPA 13602 of 2023

**Sk. Safiul Rahaman & Anr.
Vs.
State of West Bengal & Ors.**

Mr. M. A. Samad
Ms. Priyanka Sharma
....for the petitioners

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

Mr. M. A. Samad, learned counsel appears for the
petitioners.

None appears for the respondents.

The grievance of the petitioners in the writ
petition is manifold.

Only the relevant facts are stated herein.
Complaining an unauthorized and illegal construction on
the subject land, the petitioners had already travelled
this Court through **WPA 13071 of 2021** on a previous
occasion. By an order dated **September 7, 2022**,
Annexure P-4 at page 34 of the writ petition a Co-
ordinate Bench disposed of the writ petition with the
following direction:-

“As the petitioners have alleged collusion
between the respondent no. 6 and the Pradhan of
Daspur-II Gram Panchayat, this Court grants
liberty to the petitioners to approach the District

Magistrate, Paschim Medinipore with his allegations. The process by which the sanction was granted to the respondent no. 6 for construction must be looked into. Whether at all the plan which is Annexure P/2 dated December 27, 2018 was actually sanctioned in terms of Section 23 of the West Bengal Panchayat Act, 1973 is a matter to be looked into, specially because a civil suit is pending and the property is an undivided one. Consent of the other co-sharers were not taken.

If the petitioners approach the District Magistrate, Paschim Medinipur, the District Magistrate shall cause an enquiry into the affairs of the Gram Panchayat and upon perusal of the records and documents and upon hearing the petitioners, the panchayat authorities and the respondent no. 6, shall pass necessary orders with regard to the manner in which such plan was sanctioned. Such decision shall be taken within a period of three months from the date of receipt of the petitioners' application. The construction shall abide by the decision of the Civil Court. In any event, it is settled law that no equity can be claimed in respect of the construction on an undivided property and in view of the pending partition suit.

The police authorities shall keep a vigil in order to ensure that the order of injunction is not violated by the respondent no. 6.

This writ petitioner is disposed of."

Learned counsel then refers to the application made before the District Magistrate by the petitioners

dated **September 22, 2022 at page 43** to the writ petition. The record shows that the jurisdictional District Magistrate issued a hearing notice to the petitioners on **January 20, 2023, Annexure P-7 at page 55** to the writ petition. A communication of the jurisdictional Block Development Officer dated **January 23, 2023** shows there was notice for spot inspection on the subject plot, **Annexure P-8 at page 56** to the writ petition. Thereafter no step was taken by the jurisdictional District Magistrate.

In view of the above, respondent no. 2, herein, the jurisdictional District Magistrate, is directed to decide the representation of the petitioner dated **September 22, 2022** upon issuing a prior hearing notice of at least 7 days to the petitioners, respondent no. 6 and respondent no. 7 by passing a reasoned order in accordance with law in the light of the direction made by the Co-ordinate Bench in the previous writ petition dated **September 7, 2022** as referred to above.

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

The respondent no. 2 then shall communicate its reasoned order to the petitioners, respondent no. 6 and respondent no. 7 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 merits of the writ petition.

The petitioners, respondent no. 6 and respondent no. 7 shall be at liberty to urge whatever points they wish to urge but the same **shall not travel beyond the scope of the representation** dated **September 22, 2022 at page 43** to the writ petition and also not beyond the scope of the said order of the previous Co-ordinate Bench dated **September 7, 2022**, by relying upon whatever records and documents they wish to rely upon.

In the event, the reasoned decision goes in favour of the petitioners. The Pradhan shall take all necessary and consequential steps positively within a period of 7 days from the date of communication of the reasoned order to them. The respondent no. 3 shall also take all necessary steps in accordance with law in an expeditious manner to give effect to the said reasoned order, if it goes in favour of the petitioners.

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

This order also shall not create any right or equity in favour of the petitioners as already indicated in

the previous order of the Co-ordinate Bench dated **September 7, 2022.**

With the above directions and observations, this writ petition **WPA 13602 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.)