

12 20.6.2024
Sc Ct. no.2

WPA 15063 OF 2024

Nayan Mondal
Vs.
The State of West Bengal & Ors.

Mr. Sudhangshu Nath
...For the Petitioner

Mr. Jayanta Narayan Mahanty
Mr. Debasish Chattopadhyay.
....For the State

Mr. Saikat Sen
....For the Private
Respondent Nos.6 to 9

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

Mr. Sudhangshu Nath, learned advocate appears
for the petitioner.

Mr. Debasish Chattopadhyay, learned State counsel
appears for the respondent nos. 1 to 5.

Mr. Saikat Sen, learned advocate appears for the
private respondent nos. 6 to 9 through virtual mode.

The rest of the respondents are not represented.

It is noted that, private respondents and the
concerned Panchayat and its Pradhan are not
represented today, despite service. The presumption of
law is that, they do not intend to defend this writ petition.

The petitioner alleges unauthorized and illegal construction on the subject piece of land at the behest of the private respondent nos. 6 to 9. Drawing attention to a justice demand notice dated **May 13, 2024, Annexure-P5 at page 19** to the writ petition, the petitioner submits that, a representation was made on behalf of the petitioner before the Pradhan of the concerned Panchayat but the same has not yet received any attention.

Learned counsel for the State submits a report dated **June 18, 2024** issued under the seal and signature of the Inspector-in-Charge, Sonarpur Police Station, the same is taken on record.

The police report shows that, in terms of the complaint received by the police they have already initiated **Sonarpur P.S. P.R. No. 639/24** under **Section 107** of the Code of Criminal Procedure dated **June 16, 2024**. Learned counsel for the State further submits that, in addition to the above, the petitioner has already filed a title suit being **Title Suit No.268 of 2021** which is pending before the learned **Civil Judge (Jr. Div.), 2nd Court, Baruipur, 24-Pgs.(S)**.

On a query of the Court learned advocate for the petitioner submits that, he is required to take instruction from his client to ascertain what is the nature of the civil suit. However, he has confirmed that, Panchayat is not a party in the said civil suit.

Learned counsel appearing for the private respondents submits that, the construction alleged is a passage road for exit and entry at the premises. The construction was carried out on a piece of land of which the private respondents are the owners and the petitioner does not have any right, title and interest thereupon.

In reply, learned advocate for the petitioner denies and disputes the submissions made on behalf of the private respondents.

After considering the rival contentions of the parties and upon perusal of the materials on record the respondent no.3, the Pradhan of the concerned Panchayat is directed, upon a prior notice to the petitioner and private respondents to cause a physical inspection of the subject construction alleged and then upon giving an opportunity of hearing to the petitioner and the private respondent nos. 6 to 9 shall decide the representation made on behalf of the petitioner dated **May 13, 2024**, as referred to above, by passing a reasoned order.

The entire exercise, as directed above, shall be carried out and completed by the Pradhan positively within a period of **six weeks** from the date of communication of this order. The Pradhan, then shall communicate its reasoned order to the petitioner and the private respondents 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 rival claims of the parties as recorded above and the parties shall be free to urge whatever points they wish to urge by relying upon whatever records and documents they wish to rely upon before the Pradhan **but the same shall not travel beyond the representation dated May 13, 2024.**

In the event the Pradhan finds that there is an illegal and unauthorized construction, then the Pradhan shall immediately and positively within a period of **seven days** from the date of communication of the said reasoned order to the parties, as directed above, shall communicate and refer the matter before the jurisdictional Sub Divisional Officer in terms of **Sub-Section (5) of Section 23** of the **West Bengal Panchayat Act, 1973.**

The Sub Divisional Officer shall then take all necessary and consequential steps to give necessary and immediate effect to the said reasoned order strictly in accordance with law expeditiously.

It is made clear that this order shall not create any right or equity in favour of the petitioner if the petitioner is not eligible to receive his claim in terms of the said representation dated **May 13, 2024** strictly in accordance with law.

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

The petitioner shall serve a copy of this order along with a copy of the writ petition upon the jurisdictional Block Development Officer.

The jurisdictional Block Development Officer shall ensure that, the direction made herein is strictly complied with by the Pradhan of the concerned Panchayat.

It is once again made clear that, the Pradhan shall decide the issue of the alleged unauthorized and illegal construction and ***not beyond that.***

With the above observations and directions, this writ petition ***WPA 15063 of 2024*** stands ***disposed of***, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)