

Court No. 2
19.6.2024
(Item No. 32)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 14967 of 2024

Lakshmikanta Naskar & Ors.
VS
The State of West Bengal & Ors.

Md. Sarwar Jahan
Mr. Sayantan Hazra
Ms. Tapati Sarkar
.... For the petitioner
Mr. Lalit Mohan Mahata
Mr. Prasanta Behari Mahata
.... For the State
Ms. Nibedita Chakraborty
... for respondent Nos. 8 & 9

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

Ms. Tapati Sarkar, learned advocate led by Md. Sarwar Jahan, learned advocate appears for the petitioners.

Ms. Nibedita Chakraborty, learned counsel appears for respondent Nos. 8 & 9.

Mr. Lalit Mohan Mahata, learned Additional Government Pleader appears for respondent Nos. 1 to 5 and 7.

The rest of the respondents are not represented, despite notice.

The reasonable presumption in law is that, the non-appearing respondents do not intend to defend this writ petition.

Drawing attention to a representation submitted on **May 14, 2024** at **page 26** to the writ petition Ms. Tapati Sarkar, learned advocate for the petitioners submits that there has been an alleged illegal and unauthorized construction on the subject piece of land. The said representation has not yet received the attention of the Pradhan of the concerned Panchayat.

Ms. Nibedita Chakraborty, learned counsel for the private respondent Nos. 8 and 9 submits that, the construction alleged is a boundary wall and the same is exempted from obtaining any sanction plan according to the prevailing rules.

Learned Additional Government Pleader has opposed this submission made on behalf of the private respondents and submits that, any brick work construction is required to have a prior sanctioned plan from the concerned Panchayat. In absence of any sanction plan such boundary wall, even is also not allowed to be constructed.

Considering the rival contentions of the parties and upon perusal of the materials on record the respondent No. 5 is directed to ensure that the respondent No. 6 being the Pradhan of the Gram Panchayat upon issuing a prior hearing notice of at least seven days to the petitioners and the respondent

Nos. 8 and 9 shall hold a physical inspection of the subject piece of land whereupon the illegal and unauthorized construction is alleged and then after informing the said parties about the venue and time of the hearing shall grant an opportunity of hearing to the petitioner and the respondent Nos. 8 & 9 and then shall dispose of the said representation submitted on **May 14, 2024** at **page 26** to the writ petition 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 shall communicate its reasoned order to the petitioner, the respondent Nos. 8 and 9 and the respondent No. 5 positively within a further period of **two weeks** from the date of the said reasoned order to be passed.

In the event, the alleged construction is found to be illegal and unauthorized, the Pradhan shall forward the said reasoned order along with its reference in terms of **Sub-section 5 to Section 23** to the **West Bengal Panchayat Act, 1973** positively within a period of **one week** from the date of communication of the reasoned order to the petitioners and the respondent Nos. 8 and 9.

Upon receipt of such reference from the Pradhan the respondent No. 4 shall take all necessary and consequential steps to give an immediate effect to the said reasoned order strictly in accordance with law forthwith.

It is made clear that this Court has not gone into the merits of the claim and rival claims of the parties as recorded above. The parties shall be free to urge whatever points they wish to urge before the Pradhan by relying upon whatever records and documents they wish to rely upon.

It is further made clear that, this order shall not create any right or equity in favour of the petitioner, in the event, the petitioners are not eligible to receive his claim strictly in accordance with law.

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 14967 of 2024** 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.)