

35 19.6.2024
Sc Ct. no.2

WPA 15317 OF 2024

Bhowanipur Siddiquia Aminia
Karimia Madrasah & Yeatimkhana
& Anr.

Vs.

State of West Bengal & Ors.

Mr. Mohinoor Rahaman
Ms. Maria Rahaman.

....For the Petitioners

Mr. Manas Kundu
Ms. Dipanwita Ganguly.

....For the Respondent
Nos. 1 to 4

Mr. Lutful Haque
Mr. Golam Karim Chowdhury
Ms. Tahamina Khatun.

..For the Respondent
No.7

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

Mr. Mohinoor Rahaman, learned counsel appears
for the petitioners.

Mr. Manas Kundu, learned State counsel appears
for the respondent nos. 1 to 4.

Mr. Lutful Haque, learned counsel appears for the
respondent no.7.

None appears for rest of the respondents including
the concerned Panchayat and its Prodhan, despite notice.
The reasonable presumption in law is that, the non-
appearing respondents do not intend to defend this writ
petition.

The petitioners complain of unauthorized construction on the subject piece of land at the behest of the private respondent no.7. The petitioners further submit that, the subject piece of land belongs to the petitioners and not to the private respondent. Referring to a representation dated **May 14, 2024, Annexure-P2 at page 29** to the writ petition learned counsel for the petitioners submits that, the representation was made before the concerned Panchayat alleging illegal and unauthorized construction but the grievance of the petitioners has not yet been redressed.

Learned counsel appearing for the private respondent denies and disputes the submissions made on behalf of the petitioners. He submits that by virtue of a registered indenture the subject piece of land was purchased by the private respondent in the year 2006 and the construction is existing thereupon. Learned counsel for the private respondent further submits that, since the petitioners allege encroachment upon the said piece of land, this writ petition is not maintainable.

Learned counsel for the State submits that, if it is found that, the subject construction is without any sanctioned plan or in deviation thereof, the same is definitely not permitted to be existed in the eye of law.

After considering the rival contentions of the parties and upon perusal of the materials on record the respondent no.5 is directed upon issuing a prior hearing

notice of at least seven days to the petitioner and the respondent no. 7 to cause a physical inspection of the subject construction and the land on which it is situated and after granting them an opportunity of hearing shall dispose of the representation of the petitioner dated **May 14, 2024, Annexure-P2 at page 29** to the writ petition by passing a reasoned order in accordance with law.

The entire exercise, as directed above, shall be carried out and completed by the Prodhan, respondent no.5 herein positively within a period of **six weeks** from the date of communication of this order. The Prodhan, respondent no.5 herein then shall communicate its reasoned order to the petitioners, the respondent no.3 and the 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 rival claims of the parties as recorded above.

The Prodhan, respondent no.5 herein, shall only look at and consider whether the alleged unauthorized and illegal construction is in strict terms of the sanctioned plan or not. The prodhan shall not go into any title dispute over and in respect of the land and shall concentrate on the alleged illegal and unauthorized construction only.

The petitioners and the respondent no.7 shall be at liberty to urge whatever points they wish to urge before the Prodhan by relying upon whatever records and documents they wish to rely upon.

In the event the Prodhan, respondent no.5 herein finds and the reasoned order speaks that, the construction, as alleged by the petitioners, is illegal and unauthorized then the Prodhan 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 respondent no.3 in terms of **Sub-Section (5) of Section 23** of the **West Bengal Panchayat Act, 1973**.

In the event the construction is found to be illegal and unauthorized, the respondent no.3 shall take all necessary and consequential steps to give effect to the said reasoned order immediately strictly in accordance with law.

It is made clear that this order shall not create any right or equity in favour of the petitioners if the petitioners are not entitled to receive their claim 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 petitioners shall immediately serve a copy of this order along with a copy of the writ petition upon the respondent no.3 and the respondent no.5. The respondent no.3 shall ensure the compliance of this order at the end of the respondent no.5 also.

On the above terms, this writ petition **WPA 15317 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.)