

81 14.6.2024
Sc Ct. no.2

WPA 14589 OF 2023

Dulal Sk. & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Prosenjit Mukherjee
Ms. Manisa Mandal.

.... For the Petitioners

Mr. Lalit Mohan Mahata
Mr. Rudranil De.

.... For the Respondent
Nos. 1 to 7/State

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

Mr. Rudranil De, learned State counsel appears for the respondent nos. 1 to 7.

None appears for the respondent no.8, the Prodhan of the concerned Panchayat, despite notice.

The private respondent nos.9 to 17 are also not represented, despite notice.

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

The petitioners have challenged the impugned notice dated **May 16, 2023, Annexure-P4 at page 41** to the writ petition. The petitioners claim they are the owners of the piece of land in issue.

The impugned notice shows it was served upon both the petitioners and the private respondents. The

notice further shows that, the Prodhan alleged to have received one application submitted by the private respondent nos. 9, 10 and 12 alleging a dispute regarding title and/or possession and/or right in respect of the particular piece of land against the petitioners.

The second limb of the notice shows until the issue is resolved with regard to the land, the petitioners were prohibited from carrying out any construction work on the piece of land. The notice further shows there was a hearing fixed on ***May 18, 2023***.

Learned counsel Mr. Prosenjit Mukherjee appearing for the petitioners submits that, petitioners have challenged this notice and, therefore, they did not participate in the hearing scheduled under the said notice.

The Prodhan of the concerned gram Panchayat, the author of the notice, chose not to be represented despite notice which gives rise to a reasonable presumption that, the Panchayat and the Prodhan are not interested to defend this writ petition.

On a careful scrutiny of the said impugned notice dated ***May 16, 2023*** it appears to this Court that, in view of alleged existence of a title and/or possession and/or right dispute over a particular piece of land, the notice was issued prohibiting the petitioners to carry out any construction thereupon.

The Panchayat and its Prodhan are obliged and bound to discharge their duties strictly in accordance with the provisions laid down under the **West Bengal Panchayat Act, 1973** (for short the **1973 Act**) and the rules framed thereunder.

Section 23 of the said **1973 Act** provides for control of building operations. The said provision if read harmoniously along with the relevant rules framed thereunder and upon a meaningful reading thereof it appears to this Court that, if a person who intends to cause any construction of a piece of land, necessary application is required to be submitted before the Prodhan for obtaining the sanctioned building plan. The Prodhan upon being satisfied with such application and upon compliance of all formalities has the authority either to sanction the plan or to reject it. Once the plan is sanctioned and a construction is carried out on a piece of land, such construction must be strictly in accordance with the said sanctioned plan and any deviation therefrom would make such construction or part of it illegal or unauthorized. Similarly, if any construction is carried out without obtaining any sanctioned plan, the same is illegal and unauthorized.

In either of the said two situations, if the Prodhan is satisfied that, the construction is illegal and unauthorized then he shall have to refer the matter in terms of **Sub-Section (5) to Section 23** of the **1973 Act**

before the jurisdictional Sub Divisional Officer, who in turn shall take steps against such illegal and unauthorized construction strictly in accordance with law.

Therefore, the responsibility and statutory obligation of the Prodhan is that, if any construction is found to be illegal and unauthorized by him then, the Prodhan shall ascertain the validity and legality of the construction and shall take steps in accordance with law. The Prodhan therefore must arrive at a finding that the construction is illegal and unauthorized.

The impugned notice does not speak of any such finding by the Prodhan. On the contrary, the Prodhan on the basis of an alleged dispute with regard to the title and/or right and/or possession in respect of a piece of land had issued the notice without recording its satisfaction that the construction being carried out, if any, by the petitioners is illegal or unauthorised. The statute does not provide any such provision for issuance of the impugned notice arising out of a dispute with regard to a piece of land relating to its title or right or possession.

In view of the foregoing reasons and discussions, this Court is of the firm view that, the said impugned notice dated **May 16, 2023, Annexure-P4 at page 41** to the writ petition has been issued by the Prodhan wholly in excess of and/or without jurisdiction. In the eye of

law, the said impugned notice is nothing but a nullity and cannot sustain in law.

Therefore, the said impugned notice dated **May 16, 2023, Annexure-P4 at page 41** to the writ petition stands ***set aside and quashed***.

However, it is made clear that, this order shall not create any right or equity in favour of the petitioner and if, ultimately the Panchayat and/or its Prodhan comes to a finding that, any construction made on the subject land or on any part of it is illegal or unauthorized then, the Prodhan shall be free to take steps 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 this writ petition, **WPA 14589 of 2023** stands ***allowed***, without any order as to costs.

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

(Aniruddha Roy, J.)