

Court No. 2
20.6.2024
(Item No. ML-89)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 14758 of 2023

Naosar Halder
VS
The State of West Bengal & Ors.

Mr. Dyutiman Banerjee
Mr. Sourat Nandy
.... For the petitioner
Mr. Jahar Datta
Ms. Jawaria Rubema
.... For the State

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

Mr. Dyutiman Banerjee, learned advocate appears for the petitioner.

Mr. Jahar Datta, learned State counsel appears for respondent Nos. 1, 4 and 5.

Rest of the respondents are not represented including the Pradhan of the Gram Panchayat, despite notice. The law presumes the non-appearing respondents do not intend to oppose this writ petition.

The petitioner complains of unauthorized construction of a drain in front of the entrance of the property of the petitioner at the behest of the private respondent Nos. 6 to 9. The petitioner submitted a representation before the Pradhan at **page 40** to the writ petition but the same has not been decided.

Learned State counsel submits a police report dated **July 2, 2023** issued under the seal and signature of the Officer-in-charge, Memari Police Station, the same is taken on record. The report shows that at the relevant point of time the construction work was in progress. The local police authority has started a police case in terms of the complaint lodged by the petitioner.

After considering the submissions made on behalf of the parties and upon perusal of the materials on record, the Pradhan is directed to cause a physical inspection of the alleged construction upon notice to the petitioner and the private respondents and then after granting an opportunity of hearing to the petitioner and the private respondents shall decide the said representation of the petitioner at **page 40** 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 Pradhan positively within a period of **six weeks** from the date of communication of this order. The Pradhan shall communicate the 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 writ petition. The petitioner and the private respondents shall be at liberty to urge whatever points they wish to urge by relying upon whatever records and documents they wish to rely upon but the same shall not travel beyond the scope of the said representation at **page 40** to the writ petition.

In the event, the reasoned order confirms the alleged construction of drainage is illegal and unauthorized, the Pradhan positively within **seven days** from the date of communication of the said order to the petitioner and the private respondents as directed above, shall transmit the same and refer the matter before the jurisdictional Sub-divisional Officer in terms of **Sub-section 5 to Section 23** of the **West Bengal Panchayat Act, 1973**. The Sub-divisional Officer then shall take all necessary and consequential steps to give an immediate effect to the said reasoned order expeditiously and without any delay.

This order, however, 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 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.

On the above terms, this writ petition **W.P.A 14758 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.)