

Court No. 2
24.6.2024
(Item No. 16)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side
W.P.A. 15779 of 2024

Md. Wobayed Hossain Mistry & Anr.
VS
The State of West Bengal & Ors.

Mr. Zeeshanuz Zaman
.... For the petitioners
Ms. Mita Biswas
Mr. Saikat Chatterjee,
.....For the State
Mr. Shyama Prasad Purkait
Ms. Moumita Mondal
.... For respondent Nos. 8 to 10

The petitioners complained of an unauthorized and illegal construction at the behest of the private respondent Nos. 8 to 10 on the subject piece of land. The petitioners submit that, despite representations before the Pradhan of the concerned Panchayat, no step was taken.

At the threshold learned counsel for the private respondents denies and disputes the submissions of the petitioners and submits that the construction is age old.

From **annexure P-2** at **page 12** onwards to the writ petition, it appears that, there is a hand written correction on the date of each of those representations and corrected as **May 14, 2024** whereas the writ petition appears to have been affirmed on **May 13, 2024**.

None appears for the Panchayat and its Pradhan, despite notice. The law presumes they do not intend to defend the writ petition.

In view of the above, to sub-serve justice, the petitioner shall be at liberty to submit a fresh representation before the Pradhan, but the same shall not travel beyond the scope of the representation allegedly dated **May 14, 2024, Annexure P-2** at **page 12** to the writ petition, within one week from date.

In the event, such representation is submitted by the petitioners before the respondent No. 6, the Pradhan of the concerned Panchayat, upon issuing a prior notice of at least seven days to the petitioners and the private respondent Nos. 8 to 10 shall cause a physical inspection of the construction alleged and then after giving them an opportunity of hearing shall decide the representation in accordance with law.

While deciding the representation, if any further owner or interested party is left out according to the Pradhan, the Pradhan may serve notice upon such interested person before physical inspection and also before hearing and give him also an opportunity of hearing.

The entire direction as directed above shall be carried out and completed by the Pradhan positively within a period of **six weeks** from the date of receiving the representation from the petitioners. The Pradhan

then shall communicate the reasoned order to the petitioners, the private respondents and the other interested parties positively within a further period of **two weeks** from the date of the reasoned order to be passed.

It is made clear that, this Court has not gone into the merits of the claims and rival claims of the parties as recorded above. The petitioners and the interested parties as indicated above shall be at liberty 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 scope of the unauthorized and illegal construction alleged.

In the vent, the reasoned order goes in favour of the petitioners confirming the alleged illegal and unauthorized construction, the Pradhan immediately shall communicate the same and refer the matter before the respondent No. 3 in terms of **Sub-section 5 to Section 23 of the West Bengal Panchayat Act, 1973** positively within a period of **one week** from the date of communication of the reasoned order to the parties.

The respondent No. 3 then shall take all necessary and consequential steps to give effect to the said reasoned order immediately and expeditiously 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 eligible to receive his claim strictly in accordance with law.

Learned State counsel submits a report, issued under the seal and signature of respondent No. 5, the same is taken on record.

The report shows that, respondent No. 5 has already asked for necessary information from the Pradhan concerned but no response has been received.

The petitioners shall serve a copy of today's order upon the respondent No. 4 forthwith who shall ensure that the direction of this Court is completely carried out by the Pradhan of the concerned Panchayat.

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 15779 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.)