

Court No. 2

04.7.2024

(Item No. 14)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 16813 of 2024

Manas Maity

VS

The State of West Bengal & Ors.

Mr. Supriyo Chattopadhyay

Mr. Samaresh Chandra Dhara

.... For the petitioner

Mr. Jahar Lal De

Mr. Rudranil De

.... For the State

Sk. Mezamuddin

Sk. Jahadar Alam

.... For respondent Nos. 9 to 12

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

Mr. Supriyo Chattopadhyay, learned advocate along with Mr. Samaresh Chandra Dhara appearing for the petitioner.

Mr. Jahar Lal De, learned State advocate along with Mr. Rudranil De, learned State advocate appears for the respondent nos. 1 to 7.

Sk. Mizauddin, learned advocate appears for respondent Nos. 9 to 12.

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

The petitioner complains of an alleged illegal and unauthorized construction by filling up a water body at the behest of the private respondents. Relying

upon a communication issued by the respondent No. **6 dated June 21, 2024, annexure P-4 at page 25** to the writ petition and a communication issued by the Pradhan of the concerned Gram Panchayat **dated June 19, 2024, annexure P-5 at page 26** to the writ petition learned counsel for the petitioner submits that, the admitted position is a water body is being filled up and an unauthorized and illegal construction is being carried out thereupon. The fact is known to the Pradhan.

The petitioner submits that, a representation dated **June 13, 2024, Annexure-P-3 at page 23** to the writ petition has been submitted before the Pradhan of the concerned Panchayat, but the Pradhan has not taken any steps against the alleged unauthorized and illegal construction.

The learned advocate appearing for the private respondents submits that, it is their land where upon the construction has been made following due process of law. The construction has been made on the bank of the pond and not by filling up the water body. The petitioner is not the owner of the subject piece of land.

Per contra, learned counsel for the petitioner has denied and disputed the submissions made on behalf of the private respondents as recorded above.

After considering the submissions made on behalf of the parties and upon considering the

materials on record it appears to this Court that, it is the primary responsibility of the Pradhan to examine whether the alleged construction is illegal or unauthorized or there has been any water body which is being filled up. Though there is a report already existing **dated June 21, 2024** addressed to the Pradhan by the respondent No. 6.

After considering the rival contentions of the parties and upon perusal of the materials on record the Pradhan of the concerned Gram Panchayat is directed upon issuing a prior notice on the petitioner and the private respondents shall cause a physical inspection of the alleged unauthorized and illegal construction and locale and then after giving them an opportunity of hearing in the light of the existing materials as mentioned above shall decide the said representation of the petitioner dated **June 13, 2024** as referred to above in accordance with law.

The entire exercise as directed above, shall be carried out and completed by the Pradhan of the concerned Panchayat positively within a period of **six weeks** from the date of communication of this order. The Pradhan then shall communicate its reasoned order to the petitioners 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 rival contentions of the parties as recorded above and the parties 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 of the concerned Panchayat but the same shall not travel beyond the scope of the representation dated **June 13, 2024**.

In the event, the reasoned order confirms the alleged unauthorized and illegal construction, the Pradhan of the concerned Panchayat positively within a period of **seven days** from the date of the communication of the said reasoned order to the parties 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 jurisdictional **Sub Divisional Officer** then shall take all necessary and consequential steps to give an immediate effect to the said reasoned order expeditiously without any delay, 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 petitioner is not eligible to receive his claim in terms of his representation with regard to the alleged unauthorized and illegal construction.

The petitioners shall serve a copy of this order upon the jurisdictional ***Block Development Officer*** who shall ensure that, the direction of this Court is carried out and complied with 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.

With the above observations and directions this writ petition, ***WPA 16813 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.)