

25.06.2024
Item No. ml.153
Crt.No.02
b.r.

WPA 16782 of 2023

Souvik Santra
-vs-
The State of West Bengal & Ors.

Mr. Shibaji Kumar Das
..... for the petitioner.

Mr. Gautam Das
Mr. Tapan Kumar Maity
.... For the Resp. nos. 10 and 11.

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

Mr. Shibaji Kumar Das, Learned counsel, appears for the petitioner.

Mr. Gautam Das, learned counsel, appears for the private respondent nos. 10 and 11.

None appears for the rest of the respondents including the Panchayat and its Prodhan, despite notice. The law presumes they do not intend to defend this writ petition.

The petitioner complains of an alleged unauthorized and illegal construction on a piece of land at the behest of the private respondents. The petitioner has submitted a representation dated **March 27, 2023, annexure P-5 at page-38** before the Prodhan but the same has not yet received attention.

Learned counsel appearing for the private respondents denies and disputes the submissions of the petitioner. He submits that the private respondents have a valid sanctioned plan obtained from the Panchayat on the basis whereof the construction has been made. The alleged construction is no way violative to the plan sanctioned by the Panchayat authority. He refers to a plaint handed over to this Court filed by the private respondents in **Title Suit No. 179 of 2023** pending before the learned Civil Judge (Junior Division), Kakdwip, South 24-Parganas. He submits that in the plaint, the private respondents claimed a declaration of right, title and interest in respect of the subject piece of land against the defendants being the writ petitioner herein. He submits that on **June 20, 2024** an interim order was passed by the Civil Court whereby the defendants in the suit, *inter alia*, being the writ petitioner was restrained by an order of injunction from disturbing the plaintiffs' possession over the subject piece of land. It is submitted that the said interim order was made absolute till disposal of the title suit by consent of the parties.

In the light of the above, learned counsel appearing for the private respondents submits since there is a pending civil suit praying for declaration of right, title and interest over the subject piece of land

and an interim order is existing, the petitioner cannot invoke the jurisdiction of the writ court questioning the validity of the alleged construction on the subject land.

After considering the rival contentions of the parties and upon perusal of the materials on record, this Court is of the firm view that, the title suit relates to right, title and interest of the subject piece of land in which an order of injunction has been passed against the writ petitioner restraining interference with the possession of the private respondents being the plaintiffs in the said title suit. From a reading of the plaint which is taken on record and the reliefs claimed therein and from the submissions made on behalf of the private respondents, this Court is of the firm view that, pendency of the said civil suit or the existence of the said order of injunction will have no effect or bearing on the question of an alleged illegal or unauthorised construction,

If one intends to erect a construction on his land, such person first has to apply before the local authority be it Panchayat, be it Municipality to obtain a sanctioned building plan. Once the sanctioned building plan is issued such person can construct structure strictly in conformity thereof. The provision of issuance of sanctioned plan is a statutory provision and if there is any violation of such sanctioned plan while erecting a

construction, the same amounts to violation of the statutory provision. If structure is erected *de hors* the sanctioned plan or in deviation thereof, it is an illegal and an unauthorized construction. The statutory authority authorized to issue sanction plan is duty bound in law to examine such construction, if any complain is received in this regard. If such statutory duty is not performed it is a breach committed by such statutory authority in performing its statutory duties. In the instant case, admittedly a complaint was lodged before the Prodhan of the concerned Gram Panchayat alleging an illegal and unauthorized construction at the behest of the private respondents. It is the statutory obligation of the Prodhan of the concerned Panchayat to look at it and consider the same in accordance with law.

In view of the above, the Prodhan of the concerned Gram Panchayat is directed upon issuing a prior notice to the petitioner and the private respondent nos. 10 and 11 to cause a local inspection of the alleged illegal and unauthorized structure and then after giving them an opportunity of hearing shall decide the said representation of the petitioner dated **March 27, 2023, annexure p-5 at page-38** 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 positively

within a period of **six weeks** from the date of communication of this order. The Prodhan shall then 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 rival contentions of the parties as recorded above. 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 before the Prodhan but **the same shall not travel beyond the scope of the said representation dated March 27, 2023.**

In the event, the reasoned order confirms the alleged illegal and unauthorized construction, the Prodhan shall within **seven days** from the date of 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 and 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 petitioner, if the petitioner is not eligible to receive his claim in terms of his representation dated **March 27, 2023**, strictly in accordance with law.

It is further made clear that observation, if any, made herein shall not have any binding effect or bearing in the adjudication of the pending title suit filed by the private respondents, as referred to above and the jurisdictional civil Court shall not be influenced by any observation made by this Court. The said civil suit shall proceed on its own merit 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.

The petitioner shall serve a copy of this order upon the jurisdictional **Block Development Officer** who shall ensure that the direction of this Court stands carried out and complied with by the Prodhan of the concerned Panchayat.

With the above observations and directions, this writ petition, **WPA 16782 of 2023** stands **disposed of**, without any order as to costs.

(Aniruddha Roy, J.)