

199 25.6.2024
Sc Ct. no.2

WPA 18155 OF 2023

Sri Partha Haldar & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Chittapriya Ghosh
Ms. Priyanka Saha
Ms. Maitrayee Chatterjee.

... For the Petitioners

Md. Mansoor Alam

...For the Respondent
Nos.1, 3 & 4

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

Mr. Chittapriya Ghosh, learned counsel appears for the petitioners.

None appears for the respondents including the Panchayat, its Pradhan and the private respondents despite service of notice. The law presumes that, they do not intend to oppose this writ petition.

The petitioners complain of an alleged unauthorized and illegal construction on the subject piece of land at the behest of the private respondent nos. 11 to 14. The petitioners submit that, a representation dated **July 11, 2023, at page 38** to the writ petition was submitted before the respondent no.9 but not before the Pradhan of the concerned Panchayat. The petitioners submit that, the said representation has not been considered.

In law, the Pradhan of the concerned Panchayat is the appropriate authority who shall examine whether a construction within its jurisdiction is illegal and authorized.

To subserve justice, the petitioners shall be at liberty to submit a fresh representation before the Pradhan of the concerned Panchayat within **seven days** from date but the same shall not travel beyond the scope of the representation dated **July 11, 2023 at page 38** to the writ petition.

In the event such a representation is submitted, the Pradhan of the concerned Panchayat upon issuing a prior notice to the petitioners and the private respondent nos. 11 to 14 is directed to cause a physical inspection of the alleged unauthorized and illegal construction and then after giving them an opportunity of hearing shall decide the said representation of the petitioners by passing a reasoned order 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 receiving the representation from the petitioners. The Pradhan then shall communicate the 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 claim of the petitioners mentioned in the representation dated **July 11, 2023**. The petitioners 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 Pradhan of the concerned Panchayat but the same shall not travel beyond the scope of the case made out for unauthorized and illegal construction in the said representation dated **July 11, 2023**.

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 petitioners are not eligible to receive their claim in terms of the representation to be submitted before the Pradhan, strictly in accordance with law.

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 18155 of 2023** stands disposed of, without any order as to costs.

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

(Aniruddha Roy, J.)