

201 26.6.2024
Sc Ct. no.2

WPA 18258 OF 2023

Binod Mallick & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Swarup Banerjee
Mr. Sudip Kumar Ghosh.
... For the Petitioners

Mr. Moniruzzaman
Mr. Anirban Datta.
...For the Respondent
Nos. 1, 2, 4 to 7

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

Mr. Swarup Banerjee, learned advocate appears for the petitioners.

Mr. Moniruzzaman, learned State advocate appears for the respondent nos. 1, 2 and 4 to 7.

None appears for the rest of the respondents including Panchayat, its Pradhan and the private respondents, despite notice. The postal endorsement shows that, the private respondent no.10 has refused to receive the notice. The law presumes that, these respondents 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 no. 10. The petitioners submit that, a representation dated **May 25, 2023**,

Annexure-P3 at page 27 to the writ petition was submitted before the Pradhan of the concerned Panchayat and the same has not been considered.

Considering the above, the Pradhan of the concerned Panchayat is directed, upon issuing a prior notice to the petitioners and the private respondents shall cause a physical inspection of the alleged unauthorized and illegal construction and then after giving them an opportunity of hearing shall dispose of the said representation dated ***May 25, 2023, Annexure-P3 at page 27*** to the writ petition as referred to above, 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 communication of this order. 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 said representation. 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 alleged unauthorized and illegal construction.

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 their 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 18258 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.)