

215 27.6.2024

Sc Ct. no.2

WPA 18778 OF 2023

Sk. Surabuddin Ali

Vs.

The State of West Bengal & Ors.

Mr. Sk. Toslim Ali

... For the Petitioner

Mr. Sounak Bhattacharjee

Mr. Partha Sarathi Sen Sharma.

.... For the State

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

Sk. Toslim Ali, learned advocate appears for the petitioner.

Mr. Partha Sarathi Sen Sharma, learned State
advocate appears for the respondent nos. 1 to 4.

Rest of the respondents including the Panchayat, its Pradhan and the private respondent no.6 are not represented, despite service. The law presumes that, they do not intend to defend this writ petition

The petitioner complains of an alleged illegal and unauthorized construction on the subject piece of land at the behest of the private respondent no. 6. The petitioner submitted a representation dated **June 5, 2023, Annexure-P3 at page 22** to the writ petition before the Pradhan of the concerned Panchayat, still the same has not been considered.

In view of the above the Pradhan of the concerned Panchayat is directed upon issuing a prior notice on the petitioner and the private respondent no. 6 shall 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 dated **June 5, 2023** 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 petitioner and the private respondent no.6 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 petitioner mentioned in the said representation. The petitioners and the private respondent no.6 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 petitioner, 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 petitioner 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 18778 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.)