

45 02.7.2024
Sc Ct. no.2

WPA 19319 OF 2023

Abdul Jalal & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Mahfuzus Salam Mollah

... For the Petitioners

Ms. Rinku Sen
Ms. Somashree Dey.

.... For the Respondents
Nos. 1 to 3

Mr. Debasis Sur
Mr. Angsuman Patra
Mr. Hare Krishna Halder.

....For the Respondent
Nos. 6 to 9

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

Mr. Mahfuzus Salam Mollah, learned advocate
appears for the petitioners.

Ms. Rinku Sen, learned State advocate appears for
the respondent nos. 1 to 3.

Mr. Debasis Sur, learned advocate appears for the
respondent nos. 6 to 9.

The concerned Panchayat and its Pradhan are not
represented. The law presumes that, they do not intend
to defend this writ petition

The petitioners complain of an alleged illegal and unauthorized construction on the subject piece of land at the behest of the private respondents. The petitioners submitted a representation dated **April 19, 2023, Annexure-P5 at page 25** to the writ petition before the Pradhan of the concerned Panchayat, the same has not been considered.

Learned counsel for the private respondents submits that, the private respondents have already filed a title suit, being **T. S. No.566 of 2021** pending before the learned **Civil Judge, Jr. Div., Additional Court, Sadar – Hooghly, Chinsurah** against the petitioner, *inter alia*, claiming a declaration of title by way of inheritance. He also submits that the concerned Panchayat has already issued a stop work notice.

In view of the above the Pradhan of the concerned Panchayat is directed upon issuing a prior notice on 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 decide the said representation dated **April 19, 2023, Annexure-P5 at page 25** 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 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 the representation with regard to the alleged unauthorized and illegal construction.

It is also made clear that, this Court has not made any opinion with regard to the cause of action in the pending title suit as referred to above and the jurisdictional civil court shall proceed to deal with the hearing of the same in accordance with law and without being influenced by any observation made by this Court.

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 19319 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.)