

04.09.2024
Sl. No.121-123
AKG
Ct. 15

WPA 21362 of 2024
Sri Mongal Kumar Purkait & Ors.
-vs-
The State of West Bengal & Ors.

WITH

WPA 19144 of 2024
Murari Charan Purkait
-vs-
The State of West Bengal & Ors.

WITH

WPA 25287 of 2023
Sri Manoj Kumar Purkait & Ors.
-vs-
The Sikharbali-II Gram Panchayat & Ors.

Mr. Sounak Bhattacharya,
Mr. Sounak Mandal,
Mr. Abhirup Halder,
Mr. Anirban Saha Roy

...for the Petitioner in
WPA 19144/2024

Md. Mokaram Hossain,
Mr. Himangsu Ghosh

...for the State in WPA 21362/2024

Mr. Lalit Mohan Mahata,
Mr. Rudranil De

...for the State in WPA 25287/2023

Mr. Srinjay Sengupta,
Mr. Saurav Roy,
Mr. Rajib Acharyya

...for Respondent No. 6

These three writ petitions are taken up together
for hearing in view of the shared facts involved.

The petitioners in WPA 21362/2024 and WPA
25287/2023 are absent.

It appears that one Murari Charan Purkait
lodged a complaint against Manoj Kumar Purkait,

Mongal Kumar Purkait, Swapan Kumar Purkait and Debaprasad Purkait alleging unauthorised construction. Thereafter the Pradhan, Sikharbali-II Gram Panchayat in compliance with an order dated January 31, 2023 passed in WPA 9203/2022 gave an opportunity of hearing to the parties and passed a demolition order dated October 5, 2023.

After the demolition order was passed by the Panchayat, a consequential demolition notice was issued by the Sub-Divisional Officer, Baruipur by issuing a notice dated August 16, 2024.

In WPA 25287/2023, the petitioners have challenged the demolition order dated October 5, 2023, passed by the Panchayat and in WPA 21362/2024, the petitioners have challenged the notice of demolition dated August 16, 2024, issued by the Sub-Divisional Officer, Baruipur. In WPA 19144/2024, the petitioner seeks implementation of the demolition order dated October 5, 2023, issued by Panchayat.

I am inclined to allow WPA 21362/2024 and WPA 25287/2023 even in the absence of the petitioners therein.

A bare perusal of the demolition order dated October 5, 2023, indicates that the opportunity of hearing was given by the Panchayat to the parties and

after hearing, by a longish order, the Panchayat directed demolition of the relevant structure.

I am of the clear opinion that the order is without jurisdiction. Under Section 23 (5) of the West Bengal Panchayat Act, 1973, a demolition order can only be passed by the Sub-Divisional Officer concerned, not by the Panchayat. Therefore, the order of demolition dated October 5, 2023, cannot be sustained being without jurisdiction. Accordingly, the order of demolition is set aside.

Consequently, the notice dated August 16, 2024, issued by the Sub-Divisional Officer is also set aside.

In view of the aforesaid findings, there cannot be any question of implementing the demolition order dated October 5, 2023, passed by the Panchayat.

Therefore, I dismiss the writ petition being **WPA 19144/2024**.

I, however, make it clear that this order shall not prevent the Panchayat Authority to initiate a fresh proceeding in accordance with law.

Mr. Sounak Bhattacharya, learned advocate appearing for the petitioner in WPA 19144/2024, however, seeks to sustain the order of demolition by suggesting that the West Bengal Panchayat Act, 1973 requires findings of the Panchayat authority regarding an unauthorised construction to be referred to the

Sub-Divisional Officer concerned, who shall pass an order and passed on such findings only. I do not find any subsistence in such submission. The Section 23 (5) of the West Bengal Panchayat Act, 1973 provides that the Sub-Divisional Officer shall give an opportunity of hearing to the parties. Therefore, the said Section mandates the Sub-Divisional Officer to arrive at his own findings after hearing the parties.

Accordingly, **WPA 21362 of 2024** and **WPA 25287 of 2023** are allowed and **WPA 19144 of 2024** is dismissed.

Urgent certified *website* copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)