

22 25.9.2024
Sc Ct. no.2

WPA 22204 OF 2024

Prasanta Tiwary & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Abhinaba Dan
Mr. Nitish Samanta
Ms. Sreemayee Datta.

... For the Petitioners

Mr. Chandi Charan De, Ld. AGP
Ms. Reshma Chatterjee.

... For the Respondent
Nos. 1 to 5

Mr. Triptimoy Talukder
Mr. Shamba Chakraborty
Mr. Abhiraj Tarafdar
Mr. Dibyendu Ghosh.

....For the Respondent
Nos. 6 to 10

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

Mr. Abhinaba Dan, learned counsel appears for the
petitioners.

Mr. Chandi Charan De, learned Additional
Government Pleader appears for the respondent nos. 1 to
5.

Mr. Shamba Chakraborty, learned counsel appears
for the private respondent nos. 6 to 10.

The petitioners claim to be joint owners of water
body which is otherwise recorded as a pond. The
petitioners complain of an alleged unauthorized and

illegal construction by filling up the said water body at the behest of the private respondents. The petitioners submitted a representation dated **September 29, 2023, Annexure-P2 at page 17** to the writ petition but the State authority did not take any step.

Learned counsel appearing for the private respondents submits that, the private respondents are also joint owners in respect of the water body and the construction has not been done by the private respondents neither the portion of the water body has been filled up by them.

After considering the rival contentions of the parties and upon perusal of the materials on record, the respondent no.5 is directed upon issuing a prior notice to the petitioner and the private respondents to cause a physical inspection of the alleged unauthorized and illegal construction on the water body.

The respondent no.5 shall also hold a meeting between the petitioners and the private respondents and shall prepare a report with reasons after examining the land records as to the ownership of the water body. The respondent no.5 then shall submit its composite report before the Pradhan of the concerned gram Panchayat.

This exercise as directed above, shall be carried out and completed by the respondent no.5 positively within a period of **four weeks** from the date of communication of this order.

The Pradhan of the concerned gram Panchayat then upon issuing a prior hearing notice of at least **seven days** to the petitioners and the private respondents and after giving them an opportunity of hearing shall dispose of the said representation dated **September 29, 2023, Annexure-P2 at page 17** by passing a reasoned order.

The entire exercise shall be carried out and completed by the Pradhan positively within a period of **four weeks** from the date of receipt of the report from the respondent no.5. The reasoned order then shall be communicated by the Pradhan to the petitioners and the private respondents positively within **one week** from the date of the said reasoned order passed by him/her.

After the reasoned order confirms the illegal construction and illegal filling up of the water body, the Pradhan shall immediately communicate the same to the jurisdictional Sub-Divisional Officer positively within a period of **two weeks** from the date of the reasoned order to be passed by him/her.

The jurisdictional Sub-Divisional Officer then shall take all necessary and consequential steps to give an immediate effect to the said reasoned order in accordance with law but positively within a period of **four weeks** from the date of receipt of the said reasoned order from the Pradhan.

It is made clear that, this Court has not gone into the merits of the claims and rival claims of the petitioners

and the private respondents and they 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 respondent no.5 and the Pradhan of the concerned Panchayat but the same shall not travel beyond the scope of the said representation dated **September 29, 2023, Annexure-P2 at page 17.**

It is made clear that, this order shall not create any right or equity in favour of the petitioners or in favour of the private respondents, if they do not succeed to their respective contentions before the respondent no.5 and the Pradhan of the concerned gram panchayat, strictly in accordance with law.

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 22204 of 2024** stands disposed of, without any order as to costs.

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

(Aniruddha Roy, J.)