

Court No. 2
03.10.2024
(Item No. 16)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 23398 of 2024

Modina Manwara
VS
The State of West Bengal & Ors.

Mr. Sarbananda Sanyal
.... For the petitioner
Mr. Soumitra Bandyopadhyay
Mr. Priyabrata Batabyal
.... For the State respondents

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

Mr. Sarbananda Sanyal, learned counsel
appears for the petitioner.

Mr. Soumitra Bandyopadhyay, learned State
counsel appears for respondent Nos. 1 to 6.

The private respondent No. 7 to 9 are not
represented, despite notice.

The petitioner complains of an alleged
unauthorized construction of a water tank for the
locality at the behest of the respondent No. 5 allegedly
encroaching about 20 decimals of land of the
petitioner. The petitioner submitted representation
dated **June 10, 2024** before the respondent No. 5 and
the same has not been considered.

At the outset learned State counsel submits a
report dated **September 25, 2024** issued under the
signature of the respondent No. 5, the same is kept on
record. The report shows that there has been a
boundary wall constructed by the State authority on

the portion of a land of the petitioner without due process of law and the respondent No. 5 through this report has informed that the said boundary wall shall be removed forthwith. Learned State counsel further submits that, the construction of water tank is being carried out on a portion of the land which has already been donated and/or gifted by the respective land owners in favour of the respondent authorities.

Considering the submissions made on behalf of the parties and upon perusal of the materials on record the respondent No. 5 shall remove the boundary wall constructed on the portion of the land of the petitioner without due process of law positively within a period of **eight weeks** from the date of communication of this order.

The respondent No. 5 then upon issuing a prior hearing notice of at least seven days to the petitioner and after granting her an opportunity of hearing shall dispose of the said representation dated **June 10, 2024, annexure P-6** at **page 29** to the writ petition by passing a reasoned order in accordance with law.

This exercise shall be carried out and completed by the respondent No. 5 positively within a period of **eight weeks** from the date of communication of this order and the reasoned order shall be communicated to the petitioner within a period of **one**

week from the date of the said reasoned order to be passed.

It is made clear that, this Court has not gone into the rival contentions of the parties and the petitioner shall be at liberty to urge whatever points she wishes to urge by relying upon whatever records and documents she wishes to rely upon before the respondent No. 5 but the same shall not travel beyond the scope of the said representation dated **June 10, 2024**.

All the materials and documents which shall be relied upon by the respondent No. 5 in support of its contention that the land has been donated or gifted in favour of the State, copies of such documents have already been provided today in Court to the learned counsel for the petitioner by the learned State counsel.

It is made clear that, this order shall not create any right or equity in favour of the petitioner or in favour of the State while deciding the said representation dated **June 10, 2024** if the respective parties do not succeed to their respective rival claims, strictly in accordance with law.

In the event, the reasoned order to be passed by the respondent No. 5 shows that the water tank is being constructed on the portion of the land of the petitioner without following the due process of law then the State authority shall take all necessary steps

in accordance with law considering the fact that the water tank is being constructed for public purpose.

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 **W.P.A. 23398 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.)