

04.07.2024
Item No. ml.89
Crt.No.02
b.r.

WPA 21815 of 2023

Bikash Mahesh & Anr.
-vs-
The State of West Bengal & Ors.

Mr. Sounak Ghosh
Mr. Syed Ali Afzal
Mr. Subrata Mondal
Ms. Koheli Gayen
Mr. Suva Gayen
.... For the petitioners.

Mr. Santanu Kumar Mitra
Mr. Amarya Pal
... for the State.

Mr. Subrata Kumar Basu
Mr. Sanatan Manna
Mr. Saunak Sen
Ms. Gitashree Dutta
.... For the resp. nos. 6 to 8.

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

Mr. Saunak Ghosh, learned advocate appears for the petitioners.

Mr. Santanu Kumar Mitra, learned State advocate appears for the respondent nos. 1 to 3.

Mr. Subrata Kumar Basu, learned advocate appears for the respondent nos. 6 to 8.

The Panchayat and the concerned Prodhan are not represented, despite notice. The law presumes they do not intend to defend this writ petition.

Subject to payment of individual Court Fees by the two independent petitioners, the order shall be effected.

The petitioners complain of an alleged unauthorized and illegal construction on the subject piece of land at the behest of the private respondents.

The petitioners submitted a representation **annexture P-1 at page-16** to the writ petition before the Prodhan of the concerned Panchayat, but the same has not yet been decided. The petitioners have also made a representation before the **respondent no.3** also complaining of the said alleged unauthorized and illegal construction at the behest of the private respondents, **annexure p-2 at page-19** to the writ petition. The same has also not been considered.

Learned counsel for the private respondents submit that the piece of land on which the illegal and unauthorized construction has been alleged is not a vested land and is a Rayati land of the private respondents. Hence, the private respondents are eligible to raise construction in accordance with the sanctioned plan.

On the query of the Court, learned counsel for the private respondents submits that he has no instruction whether there is any sanction plan or not.

After considering the rival contentions of the parties and upon perusal of the materials on record, the following directions are made:-

- (i) The **respondent no.3** upon giving a prior notice to the petitioners and the private respondent nos. 6 to 8 shall first decide the nature and character of the subject piece of land after granting an opportunity of hearing to them and/or their authorized representatives and by passing a reasoned order in accordance with law;
- (ii) The **respondent no.3** shall carry out and complete the entire exercise positively within **four weeks** from the date of communication of this order and 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;
- (iii) The petitioners and the private respondents then shall place the said reasoned order before the Prodhan of the concerned Panchayat;

- (iv) The Prodhan of the concerned Panchayat within a period of **two weeks** from the date of receiving the said reasoned order passed by the respondent no.3 upon issuing a prior notice to the petitioners and the private respondents shall cause a physical inspection of the alleged unauthorized and illegal construction and then after granting them an opportunity of hearing shall decide the representation of the petitioners, **annexure P-1 at page-16** to the writ petition by passing a reasoned order in accordance with law;
- (v) The entire exercise shall be carried out and completed by the Prodhan of the concerned Panchayat positively within a period of **five weeks** from the date of communication of the said reasoned order of the **respondent no.3**;
- (vi) The Prodhan shall then 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 him/her;

(vii) In the event, the reasoned order of the Prodhan confirms the unauthorized and illegal construction, the Prodhan then positively within a period of **seven days** from the date of communication of the said reasoned order to the parties shall communicate 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;**

(viii) The Sub-Divisional Officer then shall take all necessary and consequential steps to give an immediate effect to the reasoned order to be passed by the Prodhan expeditiously and without any delay in accordance with law.

It is made clear that this Court has not gone into the merits of the rival contentions of the petitioners and the private respondents recorded above. 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 both before the

respondent no.3 and the Prodhan of the concerned Panchayat.

It is made clear that this order shall not create any equity or right in favour of the petitioners or in favour of the private respondents, if they do not succeed to their respective claims strictly in accordance with law either before the respondent no.3 or before the Prodhan 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.

The petitioners shall serve a copy of this order upon the respondent no.3 and also upon the jurisdictional Block Development Officer, who shall ensure that the directions of this Court is carried out and complied with by the Prodhan of the concerned Panchayat.

The petitioners and the private respondents shall be at liberty to participate in the hearing both before the respondent no.3 and before Prodhan of the concerned Panchayat by themselves or through their duly authorized representatives.

With the above observations and directions, this writ petition, **WPA 21815 of 2023** stands **disposed of**, without any order as to costs.

(Aniruddha Roy, J.)