

Court No. 2
02.4.2024
(Item No. 11)
(AB)

IN THE HIGH COURT AT CALCUTTA
Circuit Bench At Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 634 of 2024

Basabi Barman
VS
The State of West Bengal & Ors.

Mr. Haider Ali
Mr. Satyan Sarkar
..... for the petitioner
Mr. Momenur Rahaman
Mr. Anirban Banerjee
.... For the State

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

This writ petition has been filed by an alleged land owner of a land which is the subject matter of the writ petition. The alleged owner alleges that the respondent No. 5 has constructed an unauthorized and illegal construction immediately adjacent to the property of the petitioner. The petitioner prays for demolition of such construction. The land is situated within the jurisdiction of Panchayat, **Atharakhai Gram Panchayat**.

The respondent No. 5 is not represented.

Mr. Momenur Rahaman, learned State counsel appears for respondent Nos. 1 and 2.

The respondent Nos. 3 and 4 are also not represented.

Learned counsel for the petitioner drew attention of this Court to a representation dated

August 21, 2023, Annexure P-8 at **page 36** to the writ petition and also another representation dated **March 5, 2024, Annexure P-11** at **page 40** to the writ petition and submits that, those representations have not yet received attention of the relevant State authorities.

Considering the submissions made on behalf of the parties and upon perusal of the materials on record, to sub-serve justice the writ petitioner shall serve a copy of the writ with all its annexure upon the respondent No. 2 before whom the said representation dated **August 21, 2023** is also lying.

The respondent No. 2 then upon issuing a prior hearing notice of at least seven days to the petitioner, the Pradhan of the concerned Panchayat, the respondent Nos. 4 and 5 and upon giving them an opportunity of hearing shall decide the issue by passing a reasoned order in accordance with law.

The entire exercise as directed above, shall be carried out and completed by the respondent No. 2 positively within a period of **eight weeks** from the date of receiving a copy of the writ petition along with a copy of today's order as directed above. The respondent No. 2 then shall communicate its reasoned order to all the parties concerned positively within a 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 petitioner in any manner and the petitioner and all other interested parties as directed above shall be at liberty to urge whatever points they wish to urge before the respondent No. 2 by relying upon whatever documents and records they wish to rely upon. The respondent No. 2 shall be at liberty to cause survey of the subject property and the alleged construction with the assistance of any parties as he shall deem fit and proper, if necessary.

In the event, it is conclusively found that any illegal and unauthorized construction is there, the respondent No. 2 shall take all necessary and consequential steps strictly in accordance with law to demolish and remove such illegal and unauthorized construction positively within a period of **two weeks** from the date of the reasoned order to be passed.

In the event, the respondent No. 2 is required any police assistance, the jurisdictional Police authority shall provide all necessary assistance to the respondent No. 2 upon compliance of all the formalities as required to be done in law.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

It is also made clear that, this order shall not create any right or equity in favour of the petitioner, if the claim of the petitioner is not found to be lawful and genuine by the respondent No. 2.

On the above terms, this writ petition being **WPA 634 of 2024** stands disposed of without any order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)