

Court No. 2
09.9.2024
(Item No. 7)
(AB)

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

W.P.A. 880 of 2024

Sri Sankar Chouhan
VS

The State of West Bengal & Ors.

Mr. Bikramaditya Ghosh
Mr. Bapi Sarkar
Mr. Deborshi Dhar
Mr. Chayan Moni Bhowal
.... For the petitioner

Mr. Nabankur Paul
Mr. Pradip Sarkar
..... for the State

Mr. Raja Saha
Mr. Bedashruti Bose
Mr. Subham Chanda
.... For respondent No. 6
Md. Bani Israil
.... For respondent No. 9

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

The last order dated **September 4, 2024**
speaks for itself.

The record shows at no point of time the
respondent No. 4, Matigara Panchayat Samity has
been represented before this Court when the matter
was taken up from time to time, despite notice.

Affidavit of service filed today in Court, which
is taken on record also shows that, following the
direction of this Court dated **September 4, 2024**
notice was duly served upon the relevant Panchayat
Samity, the respondent No. 4, yet it chose not to be
represented.

The issue raised before this Court on behalf of the petitioner is an alleged unauthorized and illegal construction at the behest of the private respondent No. 9. Today when the writ petition has been taken up for consideration Mr. Bani Israil, learned advocate appears through virtual mode on behalf of the respondent No. 5 has submitted that, an application for regularization of alleged unauthorized and illegal construction has been filed dated **September 5, 2004** before the Panchayat Samity.

Enquiry report dated **September 14, 2023** at **page 76** to the writ petition prepared by the respondent No. 4 has confirmed the unauthorized and illegal construction on the subject premises.

Mr. Bikramaditya Ghosh, learned counsel appearing for the petitioner submits that, there was no sanctioned plan issued by the Panchayat Samity for causing the said unauthorized and illegal construction. He further submits that, the respondent No. 6 have no authority in law to issue the sanction plan.

Learned counsel appearing for private respondent No. 9 has denied and disputed the submission made on behalf of the petitioner and he submits that on the strength of duly sanctioned plan the construction has happened as would be evident from **page 79** onwards to the writ petition.

Mr. Raja Saha, learned counsel appearing for respondent No. 6 through virtual mode submits that, **post 2011** the Siliguri Jalpaiguri Development authority had no role to play in the alleged construction.

In view of the above, to sub-serve justice, the following directions are passed:-

- (a) *The respondent No. 4 through its appropriate jurisdictional authority upon issuing a prior hearing notice of at least seven days to the petitioner, private respondent No. 9 and the respondent No. 6 shall consider and dispose of the application filed by the private respondent No. 9 seeking regularization of the alleged unauthorized and illegal construction at the premises after giving them an opportunity of hearing and then by passing a reasoned order in accordance with law.*
- (b) *The respondent No. 6 through its appropriate authorized responsible officer shall participate in the hearing by presenting all the relevant existing records relating to the sanction of building plan, if any.*
- (c) *The entire exercise as directed herein shall be carried out by the respondent No. 4 through its appropriate jurisdictional authority positively within a period of **six weeks** from the date of communication of this order and then the reasoned order shall be communicated to the petitioner and the private respondent No. 9 positively within a period of **one week** from the date of the said reasoned order to be passed.*

- (d) *The application submitted by the private respondent No. 9 dated **September 5, 2024** seeking regularization of the unauthorized and illegal construction shall have to be decided only on the basis of the existing documents and records and the parties shall not submit any further records or documents in this regard.*
- (e) *In the event, the appropriate authority of the respondent No. 4 thinks fit, it shall call for the records lying with the office of the respondent No. 2 and the respondent No. 2 shall immediately produce all the records accordingly.*
- (f) *In course of the hearing if it is found that the alleged unauthorized and illegal construction is such which was done not strictly in accordance with law, which shall include that the construction should have been done in accordance with the legally valid sanctioned plan and if it is found that the alleged illegal and unauthorized construction or any part of it cannot be regularized strictly following the provisions of the prevailing law and the rules, then such unauthorized and illegal construction and/or any part thereof which is beyond regularization, as mentioned above, shall immediately be demolished and removed by the respondent No. 4 through its appropriate authority in accordance with law but positively within a period of **four weeks** from the date of the said reasoned order to be passed.*

It is made clear that, this order shall not create any right or equity either in favour of the petitioner or in favour of the private respondent No. 9, if they do

not succeed to their respective claims in course of hearing before the jurisdictional authority of the respondent No. 4 strictly in accordance with law.

In course of the demolition process, if any, Police assistance is required, the local Police authority upon being called for such assistance by the respondent No. 4 shall render its assistance in usual course.

It is made clear that, this Court has not gone into the merits of the claim of this writ petition.

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

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

(Aniruddha Roy, J.)