

25.03.2025
sayandeep
Sl. No. 41
Ct. No. 28

WPA 27047 of 2024

Basudeb Mondal & anr.
Versus
The State of West Bengal & ors.

Mr. Lutful Haque
Mr. Debabrata Chakraborty
Ms. Taharima Khatun

.....for the petitioners

Mr. Nirmalya Biswas
Ms. Mohuya Dutta Biswas

.....for the State

Affidavit-of-service filed today be kept on record.

The writ petitioners are aggrieved by the order dated August 22, 2024 passed by the Assistant Engineer, Lakshmikantapur Highway Sub-Division PW(Roads), Directorate wherein it has been recorded that the writ petitioners (Private respondents in WPA 15059 of 2024) admitted that they had constructed unauthorized structures on PWD land in front of the plots mentioned in the said order. Learned Advocate appearing for the writ petitioners submits that such recording by the respondent No. 6 was absolutely wrong and incorrect inasmuch as no such admission was made by the writ petitioners during the hearing.

In order to buttress his contention that such admission could not have been made, learned advocate for the writ petitioners places reliance on the schedule of the property mentioned in the deed of conveyance whereby the petitioner No. 1 along with their brothers

had purchased certain properties which included 3.77 decimal in plot No. 3688. He also places reliance on the record of rights where plot No. 3688 has been recorded in the name of the writ petitioner No. 1 in order to strengthen his case further. He then places reliance on the rent receipts at page 24 and 25 of the writ petition to show that he had been paying rent to the relevant Gram Panchayat. Reliance is thereafter placed on the sanctioned plan at page 26 of the writ petition to demonstrate that the construction was done upon the plan being duly sanctioned by the Gram Panchayat. Learned Advocate for the writ petitioner takes the Court through the prayers made in title suit No. 558 of 2019 instituted before the learned Civil Judge (2nd Division) 1st Court at Baruipur wherefrom it would appear that a prayer for partition has been made and the property being plot No. 3688 is involved therein. Placing reliance on the aforesaid documents, it is submitted by the writ petitioner that when there are wholesome documents to support that the land under possession of the petitioners is the petitioners' self-owned property over which they have raised constructions, there could be no question of the petitioners making any admission that they had raised constructions over the PWD land. The learned Advocate for the petitioners further hands over a copy of an affidavit filed by the writ petitioner No. 1 before the Sub-Divisional Officer at Baruipur whereby the writ petitioner No. 1 has sought to put it across that

there was never any admission made on behalf of the petitioners that they had made constructions over PWD land. Having submitted as above, the writ petitioners seek intervention of this Court in annulling the order dated August 22, 2024 as also the subsequent notice dated August 27, 2024 calling upon the writ petitioners to remove the encroachment and restore the Highways.

Learned Advocate appearing for the State opposes the writ petition and submits that the petitioners having admitted before the authority concerned, i.e., Assistant Engineer that they had raised construction on the PWD land cannot be heard taking a contrary stand today in Court. It is submitted that the petitioners have waived their right to challenge the said order passed by the Assistant Engineer inasmuch as the petitioners have not approached the said authority by way of any application stating that their submission has been wrongly recorded or that the petitioners did not make any such submission. Learned Advocate appearing for the respondents hands up a copy of the report prepared by the S.I. of Police, Bakultala P.S. which is taken on record.

Having heard the learned advocates for the respective parties and having considered the material on record, this Court finds that it is *prima facie* doubtful that the petitioners would have admitted before the respondent No. 6 in the hearing taken by the said respondent that they had raised unauthorized

constructions on PWD land. In view of the material placed before this Court and on perusal of the affidavit filed before the Sub-Divisional Officer at Baruipur, (a copy whereof has been handed up to the Court), it appears that recording done by the respondent No. 6 requires a reconsideration. In such circumstances, it would be proper for the respondent No. 6 to re-visit the matter and take an appropriate decision upon hearing the parties once again. The matter is, therefore, remitted to the respondent no. 6 from a fresh hearing

The respondent No. 6 would be free to affirm or modify or change his conclusion recorded in the order dated August 22, 2024 upon hearing the parties afresh. The respondent no. 6 shall pass a reasoned order and communicate the same to the writ petitioners within a week from the date of passing of the reasoned order by the respondent no. 6. The entire exercise will be completed by the respondent No. 6 within a period of eight weeks from date.

With these observations, the writ petition is disposed of.

(Om Narayan Rai, J.)