

Calcutta High Court

HON'BLE JUDGE(S): **ARIJIT BANERJEE, APURBA SINHA RAY , JJ**

ASHAD ALI MONDAL V. STATE OF WEST BENGAL

M.A.T. - 1547 of 2022, decided on 02/12/2022

West Bengal Panchayat Act (41 of 1973) , S.9— Encroachment and unauthorised construction - Challenge against - Pradhan of concerned Gram Panchayat directed to take a reasoned decision on the appellant's representation, after giving an opportunity of hearing to all concerned parties.

(Para 8)

Name of Advocates

Atis Kumar Biswas, Amit Singh for Petitioner;

1. **JUDGMENT:**-Affidavit of Service filed in Court today, be kept with the records.

Nobody appears for the respondents.

We do not propose to defer the hearing of this matter since the order we propose to pass will not prejudice anybody.

2. This is an appeal against a Judgment and Order dated August 18, 2022, whereby the appellant's writ petition being WPA 17998 of 2022 was dismissed by the learned Single Judge.

3. The appellant had approached the learned Single Judge with the grievance that not only the private respondent has encroached on his land, the private respondent has also constructed a building on such encroached land without obtaining requisite sanction from the concerned Panchayat.

His further grievance was that the representation that he has made to the Panchayat has not been considered.

4. The learned Judge noticed that a civil suit for partition is pending between the appellant and the private respondent. The learned Judge granted liberty to the appellant/writ petitioner to approach the concerned Civil Court regarding any grievance pertaining to alleged encroachment by the private respondent on the appellant's land.

5. Insofar as the issue of unauthorized construction is concerned, the learned Judge

recorded the submission made on behalf of the private respondent that in view of the nature of the construction, under Section 23 of the West Bengal Panchayet Act, 1973, no previous sanction of the Panchayet is necessary.

6. The learned Judge further observed that sufficient particulars of the unauthorized construction have not been furnished. Hence, no relief was granted by the learned Judge on that count.

7. We have heard learned Counsel for the appellant and we have seen the annexures to the writ petition. We are of the view that ends of justice will be sub-served if we direct the Panchayet to dispose of the appellant's representation at an early date.

8. Accordingly, we direct the Pradhan of the Tehatta Gram Panchayet, being the respondent No.9 herein, to take a reasoned decision on the appellant's representation, which was received by the Panchayet on July 22, 2022 (page 45 of the stay petition) in accordance with law, within a period of six weeks from the date of receipt of a copy of this order along with a copy of the writ petition, after giving an opportunity of hearing to all concerned parties including the appellant and the private respondent herein or their authorized representatives. The parties will be permitted to file such documents before the respondent No.9 as they may be advised. The decision taken by the respondent No.9 shall be communicated to the parties within a week from the date of the decision. In the event, the respondent No.9 finds that there is merit in the appellant's case, he shall take appropriate action in accordance with law.

9. We have not gone into the merits of the appellant's case. It will be for the respondent No.9 to take an informed decision in accordance with law.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

10. M.A.T. No.1547 of 2022 is, accordingly, disposed of along with IA CAN 1 of 2022.

11. Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

Order Accordingly