

20.09.2022
Court No. 19
Item no.73
CP

W.P.A. No. 121 of 2022

Basanti Sardar

Vs.

The State of West Bengal & Ors.

Mr. Gautam Banerjee

Mr. Anjan Dutta

.....for the petitioner.

The affidavit of service is taken on record.

The postal articles which have been sent to the respondent nos. 8 to 12, have come back with the endorsement 'Refused'. Refusal is a good service. The writ petition is taken up in their absence.

The petitioner had approached the Pathankhali Gram Panchayat by filing a complaint dated August 9, 2021. It was alleged that the respondent nos. 8 to 12 had forcefully entered into the land of the petitioner and had started raising an unauthorized construction in the absence of a plan and in violation of the rules.

Admittedly, the question of title and encroachment cannot be decided by this court. The panchayat authorities shall also not decide such dispute.

However, as there are allegations of unauthorized construction, the said complaint dated August 9, 2021 being Annexure P-6 to the writ petition, must be disposed of in accordance with law by the permission granting authority. If it appears that the permission granting authority is the Zilla Parishad, then the matter will be referred to the Zilla Parishad by the gram panchayat.

While disposing of the matter, the Zilla Parishad or the concerned gram panchayat, shall adopt the following procedure:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos. 8 to 12. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 8 to 12 and all other interested parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.
- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and was continuing, the authorities may take such interim measures by stopping such construction.

- c) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.
- d) Such report shall be handed over to the parties.
- e) A hearing shall be given to the petitioner and the respondent nos. 8 to 12. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority. All points raised by either party, will be decided.
- f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of the West Bengal Panchayat Act.

The court has not gone into the merits of the claims and the issues involved shall be decided independently.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

The question of title, possession and boundary etc. shall not be decided by the authorities. The only question to be decided by the authorities, would be whether the construction had been made without any permission and/or in violation of the building rules and the relevant laws.

A copy of the writ petition along with a server copy of this order be served upon the concerned gram panchayat for necessary compliance of this order.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)