

21.9.2022
Sl.No.18
sn

WPA 1025 of 2022

**Kajal Lata Goal(Maity) & Anr.
Vs.
The State of West Bengal & Ors.**

**Mr. S. Mukherjee
Mr. Giasuddin Mulla
Mr. S. Nath
..for the petitioner
Mr. Ziaul Islam
Mr. K. Rahaman
..for the State**

Despite service, none appears on behalf of the either of the parties. Let the affidavit of service be taken on record.

As this Court is not inclined to pass any mandatory directions as prayed for, but is relegating the matter to the authorities concerned, the writ petition is disposed of in the absence of the respondent no.8.

The petitioners allege that the order of the learned Civil Judge, Senior Division, Basirhat in the nature of status quo, has been violated by the respondent no.8.

It is alleged that in the teeth of the order of status quo, a construction is being raised, on the suit plot. Although, it is the contention of the petitioners that the learned advocate commissioner who was appointed by the civil court, had mentioned in his report that the construction was in violation of

the provisions of West Bengal Panchayat Act, 1973, such contention of the petitioners is not correct.

The report of the learned advocate commissioner does not indicate whether the construction of the respondent no.8 has been made without any permission or in violation of the panchayat law. It appears that allegation of violation of the order of status quo has been made before the civil court and a prayer was also made for police help for implementation of the order of the civil court.

The Officer-in-Charge, Minakhan Police Station was directed to implement the order of injunction.

The petitioners are also entitled to initiate proceedings under Order 39 Rule 2A of the Code of Civil Procedure before the learned civil court with the allegations of violation of the order of ad-interim injunction. Such issue shall be decided by the concerned authorities in accordance with law.

With regard to the allegations of unauthorised construction, the representation made before the concerned Gram Panchayat does not disclose the reason as to why the petitioners have alleged that the construction was illegal. It also does not appear from the records whether permission granting authority would be the gram panchayat or the Zilla

Parishad. Specific allegation has been made that the respondent no.8 was trying to raise a building and also construct a Petrol Pump.

Under such circumstances, the petitioners are granted liberty to approach the permission granting authority/gram panchayat in accordance with law by filing a detailed representation, enumerating the reasons as to why the petitioners are of the opinion that the alleged construction is without permission or in violation of the panchayat law.

If the gram panchayat finds that the permission granting authority in this case, would be the Zilla Parishad, in that event, the complaint of the petitioners shall be forwarded to the Zilla Parishad. The permission granting authority/zilla parishad shall dispose of the complaint of the petitioners, in accordance with law, by adopting the following procedure .

a) An inspection shall be conducted.

Such inspection shall be held in the presence of the petitioners and the respondent no.8 within three weeks. Advance notice of the inspection shall be served upon the petitioners and the respondent no.8. If the parties are not available to accept notice, the authorities shall affix the notices of hearing and inspection at conspicuous places in their 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 had been 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 petitioners and the respondent no.8. 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, shall 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, 1973.

The question of title, encroachment and violation of the order of status quo etc. shall not be considered by the authority.

If the authorities find that the construction has been made without any sanction plan or permission or in violation of the sanction plan or in violation of the building rules, the same shall be considered in accordance with law.

This Court has not gone into the merits of the claims and counterclaims of the parties.

The entire exercise shall be completed within a period of four months from the date of receipt of the petitioner's application.

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 learned advocates' communication.

(Shampa Sarkar, J.)