

23.11.2022  
Court No. 19  
Item no.389  
CP

W.P.A. No. 1222 of 2022

Mantu Mondal & anr.

Vs.

The State of West Bengal & Ors.

Mr. Partha Pratim Roy

Mr. S. Sanyal

Ms. Poulami Chakrabarty

.....for the petitioners.

Mr. Malay Singh

....for the State.

Despite service, none appears on behalf of the respondent no. 6.

The panchayat authorities refused service. Copy of the postal article with the endorsement 'Refused' is taken on record.

As the Court is not inclined to pass mandatory directions against the said respondents, but is relegating the entire dispute for adjudication by the competent authority under law, the writ petition is taken up in their absence.

The petitioners approached the authorities of Malibari Gram Panchayat with a complaint that the respondent no. 6 was raising a construction on Plot No. 345 of Mouza – Malibari, J.L. No. 13 without any permission from the concerned authority.

The petitioner alleges that the plot is still undivided and a partition suit filed by the respondent no. 6 was dismissed.

The issues of title, encroachment, possession and boundary cannot be gone into either by this court or by the panchayat authorities. However, the permission granting authority is bound to ensure that any construction raised within its jurisdiction, must be in accordance with law and with proper permission, as also in compliance with the building rules.

Accordingly, the writ petition is disposed of with a direction upon the Malibari Gram Panchayat to consider the representation of the petitioner being Annexure – P-5 at page 18 of the writ petition and taken necessary steps as may be required as per law.

While disposing the representation of the petitioner:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent no. 6. An advance notice of the inspection shall be served upon the petitioners and the respondent no. 6 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 petitioners and the respondent no. 6. 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 Section 23 of the West Bengal Panchayat Act.

The court has not gone into the merits of the claims.

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 panchayat authorities. The only question to be decided by the panchayat authorities would be whether the construction has 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.)**