

S/L 70
26.09.2022
Court. No. 19
sn

W.P.A. 1268 of 2022

Prosenjit Sarkar
VS
The State of West Bengal & Ors.

Mr. Atis Kumar Biswas
Mr. Amit Singh

...for the Petitioner.

Mr..L.M. Mahata
Mr. Rudranil De

..for the State

Despite service, none appears on behalf of the respondent nos. 8 to 10.

Affidavit-of-service filed in Court today, be kept with the record.

As this Court is not inclined to pass any mandatory direction as prayed for by the writ petitioner, but is relegating the entire issue to be determined by the appropriate authority, the writ petition is taken up and disposed of in the absence of the non-appearing respondents.

The petitioner alleges that the respondent no.10 has raised unauthorized construction on Dag no. 1369 of mouza Betai, without any permission from the competent authority. The allegation of encroachment has also been made. However, the writ court cannot decide the question of encroachment. The only that can be decided is whether the construction has been made with or without any permission, and in accordance with the rules.

Under such circumstances, this writ petition is disposed of with a direction upon the Betai-II Gram

Panchayat to dispose of the representation of the petitioner dated January 15, 2022, in accordance with law.

While doing so, the following procedure shall be adopted:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no.10. An advance notice of the inspection shall be served upon the petitioner and the respondent no.10 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 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. The question of right, title and possession shall not be decided by the panchayat authorities.
- e) A hearing shall be given to the petitioner and the respondent no.10. 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(5) of the West Bengal Panchayat Act, 1973.

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

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

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.)