

26.09.2022
Sl. No.74(DL)
srm

W.P.A. No. 1723 of 2022
Bishnupada Mondal & Ors.
Vs.
The State of West Bengal & ors.

Mr. Saoumitra Banerjee,
Mr. Giasuddin Mulla

....for the Petitioners.

Mr. Himadri Sikher Chakraborty,
Ms. Rajlaxhi Ghatak

.....for the State-respondents.

Mr. Dyutiman Banerjee

...for the Respondent No.6.

The petitioners allege that the respondent No.6 has raised a concrete construction on LR Dag Nos.2216, 2217, 222 and 2228 of mouza Uchitdaha, District-North 24-Parganas without any permission from the Atpukur Gram Panchayat, District-North 24-Parganas. It is the contention of the petitioners that the land has been classified as '*bilan*'.

Learned Advocate for the respondent No.6 submits that the land in question is a water body and the said respondent is in possession of the same. It is submitted that the said respondent had acquired title and possession in respect of the water body, upon purchasing the same from the predecessor-in-interest of the petitioners.

As disputed questions of facts are involved, this Court cannot decide the issues. The only issue which shall be decided by the panchayat authorities, would be whether any alleged construction had been made by the respondent No.6 on a water body and without any permission from the competent permission granting authority. The issues of title, encroachment, possession, shall not be gone into. It appears that the petitioner No.1 has already filed a representation dated January 20, 2022 before the Pradhan of Atpukur Gram Panchayat. The Atpukur Gram Panchayat shall dispose of the said representation being Annexure P4 to the writ petition, in accordance with law. If the gram panchayat authorities find that some other authority or the Zilla Parishad would be competent to deal with such construction, the same shall be referred to the said authority. While doing so, the following procedure shall be adopted by the authority empowered by the law to take steps in this regard:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of all parties, with 48 hours advance notice to the petitioners and the respondent No.6.

- b) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioners as also the interested parties.
- d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and is continuing, the authorities may take interim measures by stopping such construction.
- e) A hearing shall be given to the petitioners and all the parties. 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.
- 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 accordance with law.

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

The only question to be decided will be whether the construction has been made on a pond and without any authority of law or without any permission from the appropriate authorities and without obtaining conversion.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)