

21.09.2022
Court No. 19
Item no.83
CP

W.P.A. No. 2014 of 2022

Srabani Karpa

Vs.

The State of West Bengal & Ors.

Mr. Mukteshwar Maity

Mr. Goutam Sardar

Mr. Goutam Malik

Mrs. S. P. Chowdhury

.....for the petitioner.

Mr. Gazi Faruque Hossain

Ms. Priyanka Mondal

....for the respondent no. 9.

Mr. Malay Krishna De

Mr. Biswajit Dutta

...for the State.

It is submitted by the petitioner, that the respondent no. 9 has raised new construction without obtaining a sanction from the panchayat authorities. It is submitted that the requisite distance, necessary to be maintained from the adjacent construction has not been kept. The allegation is that the construction is without any sanction and contrary to Section 23 of the West Bengal Panchayat Act, 1973.

Learned advocate for the respondent no. 9 denies such allegation.

The petitioner had approached the pradhan of Madarat Gram Panchayat by filing a representation. Pursuant to receipt of such representation, a 'stop work' notice was issued by the Madarat Gram Panchayat upon respondent no. 9.

Report filed by the Block Development Officer and the pradhan, submitted through the learned advocate for the State respondents, are taken on record. The report indicates that the construction of the petitioner is also not in accordance with the plan. Deviation in the construction of the respondent no. 9, was also detected.

As the panchayat authorities have already been approached, the writ petition is disposed of with a direction upon the concerned gram panchayat to treat the writ petition as a representation and decide the issues raised, 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. 9. An advance notice of the inspection shall be served upon the petitioner and the respondent no. 9 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 no. 9. 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.

The court has not gone into the merits of the claims. This order shall not prevent the panchayat authorities from taking necessary action, if the petitioner's construction is also found to be contrary to the permission or in violation of the law.

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 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.)