

26.09.2022
Sl. No.76(DL)
srm

W.P.A. No. 2052 of 2022
Sri Kanai Pore @ Kanai Lal Pore & Ors.
Vs.
The State of West Bengal & ors.

Mr. Nilanjan Adhikari
....for the Petitioners.

Mr. Lalit Mohan Mahata,
Mr. Rudranil De
.....for the State-respondents.

Mr. Bratin Kumar Dey,
Mr. Arun Goswami,
Ms. Mahasweta Pramanik
...for the Respondent Nos.6 & 10.

Affidavit-of-service is taken on record. Despite service, none appears on behalf of the respondent Nos.7, 8, 9 and 11.

The petitioners allege that the respondent Nos.6 to 11 have been raising an unauthorised construction, without any sanction from the Irhpala Gram Panchayat, District-Paschim Medinipur. It is submitted that the property is a '*debutter*' property and the petitioners and the respondent No.10 are the '*sebaitis*'. The respondent Nos.6 to 9 and 11 are allegedly the men and agents of the respondent No.10. The allegation is that all the respondents together, aided and abetted in the demolition

of a temporary structure, which was used as a kitchen and a cowshed, and thereafter, raised the unauthorised construction.

The learned Advocate for the respondent Nos.6 and 10 submits that no construction had been made by the said respondents. That the said respondents do not have any interest or connection with the alleged construction. The other respondent Nos.7, 8, 9 and 11 may have made the construction, but the said learned Advocate is not representing those respondents.

It appears that the respondent No.11 is the contractor and also a civic police.

However, these disputes cannot be decided by the Writ Court. Admittedly, a civil suit is pending. The question of title, encroachment, demolition of the earlier structures will be adjudicated by the learned civil court. The only point which the permission granting authority is empowered to adjudicate, is whether the alleged construction has been made in accordance with Section 23 of the West Bengal Panchayat Act, 1973 and in accordance with the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004.

Under such circumstances, the writ petition is disposed of without going into the merits of rival claims of

the parties. The petitioners have not approached the competent authority of the concerned gram panchayat with their grievances. Liberty is granted to the petitioners to file a detailed complaint before the panchayat authorities in accordance with law with specific allegations. Vague and omnibus allegations shall not be permitted. If such specific allegations are made, the same shall be disposed of in accordance with law by the concerned gram panchayat. The question of title, possession, encroachment, etc. shall not be gone into. Right of the petitioners to enter into the property and also to pray for protection of the property are to be decided by the learned civil court. The concerned authority shall only adjudicate whether any kind of construction has been made without any permission.

The Court has not decided the issue on merits but is relegating the same for a decision by the authority under the provisions of Section 23 of the West Bengal Panchayat Act, 1973. While doing so, the gram panchayat shall adhere to the following procedure:-

- 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 Nos.6 to 11.

- 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 terms of the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

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

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.)