

S/L 46
27.09.2022
Court. No. 19
GB

W.P.A. 3145 of 2022

Renuka Dalapati
VS
The State of West Bengal & Ors.

*Mr. Shibaji Kumar Das,
Ms. Rupsa Sreemani,
Mr. Jagadish Das.*

...for the Petitioner.

*Mr. R. Saha,
Mr. S.P. Lahiri.*

...for the State.

Mr. Debdutta Saha.

...for the Respondent Nos.9 to 13.

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

The petitioner alleges that the respondent nos.9 to 13 have raised a construction unauthorizedly, without any sanction. It is further submitted that the construction has been made in such a way that a part of a water body has been encroached.

Denying such allegation, the learned advocate for the respondent nos.9 to 13 submits a plan, which has been sanctioned by the Swami Vivekananda Gram Panchayat.

It also appears that the permission has been given for construction up to the first floor on L.R. Plot No.207, pertaining to L.R. Khatian No.2242 in Mouza-Kakdwip. The construction was directed to be completed within a period of one year from the date of issuance of the permission, that is, within December, 15, 2022.

The learned advocate for the said respondents submits that the order of injunction passed by the civil court was with regard to a construction over a common passage

and as such, such issue cannot be decided in this writ petition. He further states that by misinterpreting the order of injunction, the petitioner had informed the police authorities, who have also stopped the construction, without any authority of law.

In any event, the issue of encroachment, construction over a private property, violation of the order of injunction, etc., are matters to be decided by the appropriate civil court. The panchayat authorities shall only enquire into the matter to ascertain whether the construction has been made as per permission and as per the sanction granted.

The petitioner shall file a representation before the panchayat authorities with his grievances. The issue shall be restricted to the allegation of extension of the construction by deviating from the plan and/or permission. Other issues shall not be decided. The panchayat authorities shall dispose of the said representation in accordance with law by adopting the following procedure:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos. 7 to 13. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 7 to 13 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 nos. 7 to 13. 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 representation.

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.)