

S/L 86
28.09.2022
Court. No. 19
GB

W.P.A. 4237 of 2022

Saheb Laskar
VS
The State of West Bengal & Ors.

*Mr. Aimesh Mookerjee,
Md. Ali Ahasan.*

...for the Petitioner.

*Mr. Soumitra Mukherjee,
Mr. Rajat Dutta.*

...for the State.

*Mr. Sounak Bhattacharya,
Mr. Sounak Mandal.*

...for the Respondent No.9.

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

The petitioner alleges that the respondent no.9 has raised certain unauthorized construction on Plot No.1120 of Mouza-Jangali, without any permission and without conversion of the said land to homestead land. According to the petitioner, the land continues to be classified as 'Sali'.

The petitioner approached the concerned panchayat authorities with his grievances. The said representation is marked as Annexure-P/2 at Page-20 of the writ petition.

These disputed questions of facts cannot be gone into by this Court. The issue of encroachment and claim of title has to be decided by the civil court. All that the panchayat authorities must determine, is whether the construction has been made in violation of the provisions of Section 23(1) of the West Bengal Panchayat Act, 1973 read with Rule 26 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004.

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. The question of title, possession and boundary dispute etc. shall not be decided by the panchayat authorities. The only question to be decided by the panchayat authorities would be whether the construction has been made without any permission and/or in violation of the building rules. Also, the age of the building and whether such building existed prior to the promulgation of the West Bengal Panchayat Act shall also be decided. Expert opinion with regard to the age of

the building shall be sought for, by the gram panchayat. Such opinion shall be a part of the report.

- 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, 1973.

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

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