

22.02.2023
Court No. 19
Item No.11
CP

W.P.A. No. 5139 of 2022

Pampa Mondal & anr.

Vs.

The State of West Bengal & Ors.

Mr. Shataroop Purakayastha

Mr. Rajes Mondal

Ms. Jagriti Bhattacharya

.....for the petitioners.

Mr. Jahar Lal Dey

Mr. Abdus Salam

....for the State.

Mr. Ayan Banerjee

Mr. Suman Banerjee

...for the respondent nos. 6 & 7.

The petitioners allege that the respondent nos. 6 and 7 have made an illegal construction on a plot adjacent to L.R. Dag No. 246 of Mouza – Bagila.

Specific allegation is that a staircase and iron gates had been constructed without permission. Such construction had been extended upto the boundary wall of the petitioners.

Learned advocate for the respondent nos. 6 & 7 has submitted a plan with proposed repairs. Such repairs were allowed by the authority, on May 17, 2013. According to him, such construction of the staircase had been made on the basis of the proposed plan. He denies the allegation that the staircase had been constructed over the boundary wall of the petitioners. It is submitted that a civil suit is pending and the allegations made in

the civil suit are similar to those made in the writ petition.

It is submitted by the petitioners that the staircase had been reconstructed and was not a part of the pre-existing construction, as allegedly claimed by the respondents.

The issue of encroachment which is the subject matter of the Title Suit, cannot be gone into by this court. It also appears that the respondent nos. 6 and 7 were allowed to demolish certain old portions and reconstruct on the basis of the plan sanctioned by the authority on May 17, 2013.

Thus, the issues to be now decided by the permission granting authority would be whether the repairing work as also the addition and alteration had been done according to the plan sanctioned by the authority. The authority shall specifically determine whether the proposed repair plan was also in respect of the staircase. Whether the repair had been undertaken by the respondent nos. 6 and 7 in accordance with the plan and whether the alleged dilapidated staircase had been newly repaired or not, or had extended beyond its earlier position and beyond the plan, shall be determined. If any construction, apart from the ones permitted under the repair plan, are found to have been made, the authorities will act and proceed according to law.

While deciding the above issues the following procedure shall be adopted:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent nos. 6 and 7. An advance notice of the inspection shall be served upon the petitioners and the respondent nos. 6 and 7 and on 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 repair and new constructions were beyond the plan and were continuing, the authorities may take such interim measures by stopping such construction.
- c) A 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 petitioners and the respondent nos. 6 and 7. 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.

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

The disputes with regard to title, possession and boundary etc., shall not be decided by the panchayat authorities.

This order shall not have any bearing on the pending civil suit.

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.)