

S/L 7
16.11.2022
Court. No. 19
GB

W.P.A. 5243 of 2022

Niranjan Mondal
VS
The State of West Bengal & Ors.

*Mr. Saibal Acharyya,
Mr. Laxminath Bhattacharya.*

...for the Petitioner.

*Md. Gausul Alam,
Mrs. Rupsha Chakraborty.*

...for the State.

Mr. Pradip Kumar Mondal.

...for the Respondent No.7.

Mr. Balai Lal Sahoo.

...for the Gram Panchayat.

The role of the concerned police officer of Raidighi Police Station is appreciated. He has carried out the order of this Court by producing the Pradhan of Kumarapara Gram Panchayat with all relevant records.

The Pradhan of Kumarapara Gram Panchayat is present in person. He tenders apology for not having appeared before this Court through his learned advocate on the earlier occasion. His personal appearance is dispensed with.

It is clear that the respondent nos.10 to 16 do not have any permission to make any construction on L.R. Plot No.3661 of Mouza-Kumarapara.

It is submitted by the learned advocate for the Pradhan that as there is an embargo with regard to the construction within the coastal area, permission for construction cannot be granted. It is further submitted that the construction of the petitioner is primarily a thatched

roof, but the panchayat authorities are not yet sure as to whether any brick walls have also been constructed.

The learned advocate for the respondent nos.10 to 16 submits that an application for permission to raise a construction had been made long ago, but due to the order of the National Green Tribunal, the panchayat authorities did not grant such permission. It is further submitted that only a thatched structure has been constructed and such construction was exempted under Rule 19 of the West Bengal Panchayat (Gram Panchayat and Administration) Rules, 2004. It is also stated that the dispute with regard to title and the allegations of encroachment are sub-judice before the learned civil court.

Under such circumstances, as admittedly there is no permission for construction, the only issue to be determined by the panchayat authorities would be whether the thatched structure which has been constructed by the respondent nos.10 to 16 was exempted from the purview of Section 23 of the West Bengal Panchayat Act, 1973, read with Rule 19 of the Administration Rules, 2004.

The concerned Gram Panchayat shall dispose of the representation of the petitioner dated September 28, 2021 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 nos.10 to 16. An advance notice of the inspection shall be served upon the petitioner

and the respondent nos.10 to 16 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 issues with regard to title, possession and boundary disputes etc. shall not be gone into by the panchayat authorities. The only issue to be decided is whether the alleged construction of the respondent nos.10 to 16 was in violation of the Panchayat Act or not.
- e) A hearing shall be given to the petitioner and the respondent no.6. 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 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. This order shall not prejudice the civil suits.

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