

12.05.2022
Court No. 19
Item no.10
CP

W.P.A. No. 5253 of 2022

Kumud Kamal Gayen
Vs.
The State of West Bengal & Ors.

Mr. Tanmoy Mukherjee
Mr. Tamal Taru Panda
Mr. Rudranil Das
Mr. Souvik Das

...for the petitioner.

Ms. Sutapa Sanyal
Ms. Susnita Saha

...for the State.

Mr. Sujit Bhunia

....for the respondent nos. 7 & 8.

Mr. Jayanta Kumar Das
Ms. M. Das

....for the respondent no. 6.

The petitioner and the respondent nos. 7 and 8 are co-sharers in respect of Plot Nos. 271 and 272 pertaining to Khatian No. 284, J.L. No. 268 of Mouza – Purba Gadadharpur. The allegation is that the respondent nos. 7 and 8 have raised certain concrete structures without any permission from the panchayat authorities. A prayer is made for a direction upon the panchayat authorities to initiate proceedings under Section 23 of the West Bengal Panchayat Act, 1973.

Mr. Bhunia, learned advocate appearing on behalf of the respondent nos. 7 and 8, submits that due to 'Amphan' their temporary 'kuchcha' structure was destroyed. Accordingly, an application was made before the panchayat authorities for a permission to construct on their portion of the land which they had been enjoying for some time by building a dwelling house along with the other co-sharers. The panchayat authorities did not respond to such request and by invoking the deeming provisions, a single storey structure had been constructed. The application filed before the panchayat authorities along with the plan have been produced before this court.

Mr. Das, learned advocate appearing on behalf of the respondent no. 6, submits that upon receipt of the complaint from the petitioner a meeting was convened, but the petitioner was not present. He submits that after receipt of the 'stop work' notice all further construction has been stopped.

Mr. Mukherjee, learned advocate appearing on behalf of the petitioner, submits that even if the deeming provisions has been invoked, a notice to that effect should have been served upon the panchayat authorities. He further submits that the easementary right of light and air of the petitioner has been disturbed in view of the construction which

has not been made without maintaining the mandatory side space.

It is not in dispute that the petitioner is a co-sharer. It is also not in dispute that the co-sharers have been enjoying the property in their respective portions by construction of a dwelling house. The dispute is with regard to the construction made by the respondent nos. 7 and 8 without allegedly following the rules. The requisite side space have not been kept, it is alleged.

Under such circumstances, as the panchayat authorities have already taken cognizance of the complaint of the petitioner and has issued notices to the parties, nothing further remains to be decided in the writ petition.

The competent authority of the Kalindi 8 (Eight) No. Anchal Gram Panchayat shall dispose of the entire issue in accordance with the provisions of Section 23 of the West Bengal Panchayat Act, 1973. The question of deemed sanction as raised by the respondent nos. 7 and 8 shall also to be decided in the proceeding. The following procedure shall be adopted in reaching the proceedings to its logical conclusion:

- a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence of the parties, with 48

hours advance notice to the petitioner and the respondent nos. 7 and 8. If the parties are not available for service of the notice, the notice shall be affixed at a conspicuous place at the premises in question.

- b) During inspection, if any further construction is detected in violation of the rules, then the panchayat authorities can take interim measures.
- c) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- d) Such report shall be handed over to the petitioner as also the respondent nos. 7 and 8.
- e) A hearing shall be given to the petitioner and respondent nos. 7 and 8. 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 statute.

The court has not gone into the merits of the claims and counter-claims of the parties and the issues shall be decided independently.

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

The report of the police authorities is kept on record.

As no affidavit has been called for, allegations are deemed to have been denied.

The writ petition is, thus, disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)