

23.11.2022
Sl. No.425(ML)
srm

W.P.A. No. 5986 of 2022
Subal Chandra Jana & Ors.
Versus
The State of West Bengal & Ors.

Mr. Nirmalendu Patra,
Mr. Debnarayan Patra

....for the Petitioners.

Mr. Abdus Salam

...for the State-respondents.

Affidavit-of-service is taken on record. The respondent Nos.7 and 8 have refused to accept the service. The postal article with the endorsement 'refused' is taken on record.

The petitioners allege that the Padima-II Gram Panchayat, District-Purba Medinipur has failed and neglected to comply with an earlier order passed by a co-ordinate Bench of this Court dated March 23, 2021. Aggrieved by an alleged construction the writ petitioners approached this court on an earlier occasion.

The specific contention of the petitioners was that the respondent Nos.7 and 8 were constructing without leaving the mandatory side spaces vacant. A co-ordinate Bench had directed the concerned gram panchayat to take necessary

steps. It is alleged that the gram panchayat failed and neglected to comply with the earlier order of the co-ordinate Bench.

Again a demand of justice was filed by the petitioners through their learned Advocate with the same allegations. Specific averment had been made that the construction of the respondent Nos.7 and 8 was in violation of the building rules as the minimum space between two houses had not been kept vacant.

The writ petition is disposed of with a direction upon the Padima-II Gram Panchayat, District-Purba Medinipur to consider the demand notice dated April 12, 2021, which is annexure P/6 at pages 55 and 56 of the writ petition and dispose of the same in accordance with law. While doing so, the following procedure shall be adopted by the permission granting authority, while disposing of the matter:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent Nos.7 and 8. An advance notice of the inspection shall be served upon the petitioners and the respondent Nos.7 and 8 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.
- e) A hearing shall be given to the petitioners 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 the provisions of Section 23(5) of the West Bengal Panchayat Act.

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

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

The writ petition is, thus, disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)