

23.09.2022
Court No. 19
Item no.06
CP

W.P.A. No. 7520 of 2014

Goloke Chakraborty

Vs.

The State of West Bengal & Ors.

Mr. Partha Pratim Roy

Mr. Sarbananda Sanyal

.....for the petitioner.

None appears on behalf of the respondents.

This is an old matter and no useful purpose will be served, by keeping the matter pending.

As the Court is not inclined to pass mandatory directions, as prayed for in the writ petition, but is relegating the entire dispute for adjudication by the competent authority under law, the writ petition is taken up in their absence.

The petitioner alleges construction on a pond. The petitioner had approached the Sub-Divisional Officer, Domkal, Murshidabad in this regard. The alleged construction is over a pond being Plot No. 2018 of Mouza – Islampur.

Reliance has been placed on the record of rights to demonstrate that Plot No. 2018 has been classified as a '*Pukur*'.

It also appears that the Block Land & Land Reforms Officer, Raninagar-I was requested by the

Sub-Divisional Officer, Domkal to take necessary actions.

The petitioner has alleged that the construction is in a panchayat area and on a pond. The panchayat authorities could not have and should not have issued any sanction in this regard.

Whether any permission was granted by the panchayat authorities, is not available in the records. The petitioner is also not able to enlighten the court as to whether the construction was made with the permission of the panchayat authorities or not.

Rule 32 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 (hereinafter referred to as 'the said Rules'), provides the grounds for which, permission for construction can be withheld by a gram panchayat. The court finds that permission can be withheld if the proposed structure was likely to disturb the environment and sanitation of the locality. Rule 26 of the said Rules, also provides that if any structure or building is proposed to be erected or constructed on a land recorded otherwise than as a homestead land, permission shall also be withheld by the authority.

As the law categorically states that the panchayat authorities cannot permit construction on any land other than homestead land, this court is of the view that the writ petition must be treated as a

representation and the Chak Islampore Gram Panchayat must dispose of the same in accordance with law, upon hearing the petitioner as also respondent nos. 9 and 10. The panchayat authorities shall clearly indicate whether the construction has been made in accordance with law or in violation of the law, and take necessary steps. If the gram panchayat authorities find that some other authority would be authorized to deal with such construction, the same shall be referred to the said authority, by the gram panchayat.

The following procedure shall be adopted by the authority empowered by the law, to take steps in this regard:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos. 9 and 10. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 9 and 10 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 petitioner and the respondent nos. 9 and 10. 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 accordance with law.

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 questions to be decided will be whether the construction has been made on a pond, without any authority of law and without any permission from the competent authorities.

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.

The petitioner's rights under other laws before the appropriate authorities in this regard, are kept open.

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.)