

06.09.2022
Court. No. 19
Item 12 (DL)
Cp

W.P.A. No. 10355 of 2021

Abdus Salam Mallick @ Salam Mallick
Vs.
The State of West Bengal & Ors.

Mr. D. K. Samanta
Mr. Ashis Kumar Paul

... for the petitioner.

Mr. Pinaki Dhole
Mr. Amartya Pal

... for the respondent no.7.

Mr. Santanu Kumar Mitra
Mr. Mirza Kamruddin

...for the State.

Affidavit of service is taken on record.

None appears on behalf of the respondent nos. 9
to 11.

As this court is not entertaining the writ petition
but is relegating the entire dispute before the
appropriate authority, the matter is taken up in the
absence of the respondent nos. 9 to 11.

The petitioner seeks implementation of an order
passed by the Block Development Officer, Mangalkote
Development Block. It appears that the Block
Development Officer had directed the Pradhan,
Mangalkote Gram Panchayat to take necessary action

as per Section 23(6) of the West Bengal Panchayat Act, 1973.

This court on an application filed by the petitioner had directed the Block Development Officer to consider the representation of the petitioner. In the representation the petitioner had alleged that the Pradhan, Mangalkote Gram Panchayat had failed and neglected to take steps on the basis of the complaint filed by the petitioner.

Thus, this court was of the view that a superior authority should be directed to look into the allegations of the petitioner. The Block Development Officer upon considering the petitioner's allegations had directed the Pradhan to take certain steps as per law.

The petitioner submits that the Pradhan is still inactive.

Under such circumstances, as considerable time has been passed, this court is of the view that a fair chance must be given to the petitioner to raise his disputes before the Mangalkote Gram Panchayat with his allegations against the alleged construction of the respondent nos. 9 to 11.

This court has not gone into the merits of the allegations made by the petitioner. Neither this court nor the panchayat authorities can decide the issues of title, possession and encroachment. The only issue

that can be decided is whether the alleged construction by the respondent nos. 9 to 11 was in accordance with law or not.

The petitioner shall file such representation/complaint within a period of two weeks from date. The same shall be disposed of by the concerned gram panchayat. While doing so, the following procedures shall be adopted:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos. 9 to 11. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 9 to 11 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.
- e) A hearing shall be given to the petitioner and the respondent nos. 9 to 11. 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 and the issues involved shall be decided independently.

The entire exercise shall be completed within a period of four months from the date of receipt of the representation/complaint.

The question of title, possession and boundary etc. shall not be decided by the panchayat authorities. The only question to be decided by the panchayat authorities, would be whether the construction has

been made without any permission and/or in violation of the building rules and the relevant laws.

The notice of the Block Development Officer which is impugned before this court dated December 27, 2019 shall not be given effect to.

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.)