

S/L 24
06.09.2022
Court. No. 19
GB

W.P.A. 11806 of 2021

Shri Amar Naskar
VS
The State of West Bengal & Ors.

*Mr. Sanjib Bandopadhyay,
Mr. Manaj Kr. Mondal,
Mr. Shok Kr. Singh.*

...for the Petitioner.

*Mr. Himadri Sikhar Chakraborty,
Mr. Arunava Maiti.*

...for the State.

*Mr. Indrajit Medda,
Mr. Subhas Medda.*

...for the Respondent Nos.7 & 8.

The petitioner alleges unauthorized construction by the respondent nos.7 and 8. According to the petitioner, by extension of the earlier existing structure, the respondent nos.7 and 8 have violated the law. Permission was not taken for such extension and the extension has also encroached into the mandatory open side spaces, which are required to be kept vacant under the law.

The learned advocate for the respondent nos.7 and 8 submits that there has been no new construction. The existing structure was built by their predecessor-in-interest much prior to the coming into force of the West Bengal Panchayat Act, 1973. That some repairing work was going on. The allegation of encroachment cannot be gone into either by this Court or by the panchayat authorities, as such allegation has to be decided by a civil court.

Under such circumstances, the writ petition is disposed of with a direction upon the Kalikapur-II Gram Panchayat to dispose of the representation of the petitioner

dated March 15, 2021 in accordance with law. The legality of the extension of the existing structure and reconstruction shall be decided. Question of title, boundary dispute, etc. shall not be decided.

While doing so, the following procedure shall be adhered to:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos.7 and 8 within three weeks in order to ascertain whether under the garb of repairing, any new constructions have been made, contrary to law and/or also in violation of the rules. Existence of the old structure has not been disputed by any of the parties. Advance notice of the inspection shall be served upon the petitioner and the respondent nos.7 and 8. If the parties are not available to accept notice, the authorities shall affix the notices of hearing and inspection at conspicuous places in their respective premises.

b) In case, it is found on preliminary inspection that there may be reasons to believe that the extension 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.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. All points raised by either party, shall 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.

This Court has not gone into the merits of the claims and counter-claims of the parties. The entire issue shall be decided by the concerned authority independently.

The entire exercise shall be completed within a period of four months from the 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 learned advocates' communication.

(Shampa Sarkar, J.)