

05.09.2022
Court. No. 19
Item 12 (ML)
Cp

W.P.A. No. 10551 of 2022

Kripasindhu Halder
Vs.
The State of West Bengal & Ors.

Mr. Lakshminath Bhattacharya
... for the Petitioner.

Mr. S. Bhattacharya
Mr. Chandra Nath Sarkar
... for the respondent nos. 10 & 11.

Ms. Sipra Majumdar
Ms. Prativa Ghatak

...for the State.

The petitioner alleges that the panchayat authorities have failed and neglected to act on the basis of the order dated June 27, 2016, passed in MAT 272 of 2016. The appeal was preferred by the respondent no. 11. The appeal arose out of an order of a coordinate Bench dated December 21, 2015.

The writ petitioner had alleged unauthorized construction by the respondent nos. 10 & 11. The Pradhan, Radhakantapur Gram Panchayat had submitted before the learned court that a proceeding had been initiated against such construction, but the respondent nos. 10 & 11 had not participated in the said proceeding. It was found that the provisions of law had been violated while raising such construction. The

writ petition being W.P. 24395(W) of 2014 was disposed of with a direction upon the Pradhan, Radhakantapur Gram Panchayat to pass necessary consequential orders including the order of demolition of the unauthorized construction in accordance with law, within a period of 8 weeks from the date of communication of the order. The authority was permitted to take police assistance. Aggrieved by such order the respondent no. 11 preferred MAT 272 of 2016 along with an application for stay being CAN 4832 of 2016.

The Hon'ble Division Bench held that if the area was within the control of the panchayat, the laws governing such unauthorized construction in a panchayat area must be applied and the panchayat authorities must take action.

Otherwise if the encroachment was on a public road, it should be dealt with by the Executive Engineer, PWD (Highways and Roads). Accordingly the following directions were passed:

“We direct both the parties, that is Executive Engineer, PWD (Highways and Roads) as well as Pradhan of the concerned Panchayat to initiate action in accordance with the procedure contemplated not only against the appellant but also against other unauthorized occupants if found on the said highway or the road.”

It is submitted by the petitioner that although the Executive Engineer, PWD (Highways and Roads) had discharged his part of the obligation by

demolishing the structure which was on the public road, the panchayat authorities failed and neglected to take steps in accordance with law.

Mr. Bhattacharya, learned advocate for the respondent no. 11, submits that the petitioner has, in effect, claimed removal of an encroachment and such issue can only be decided in a civil suit. It is further submitted by him that the land in question where the alleged construction is being done, has been purchased by the said respondent.

Be that as it may, the question of title, encroachment and boundary disputes etc. cannot be decided by the writ court. However, the writ court is empowered to ensure implementation of the law and discharge of statutory duties by any authority including the panchayat authorities. The Division Bench had already directed that the panchayat authorities must apply the law in respect of such construction over the panchayat area. Such exercise has not been undertaken by the panchayat authorities. The order of the Division Bench had attained finality.

Under such circumstances, the writ petition is disposed of with a direction upon the Radhakantapur Gram Panchayat to act and proceed on the basis of the direction of the Division Bench passed in MAT 272 of 2016. While doing so, the following procedure shall be adopted:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos. 10 and 11. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 10 and 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 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. 10 and 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 communication of this order, independently and in accordance with law.

The question of title, possession and boundary dispute 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 or is contrary to law.

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.)