

06.09.2022
Sl. No.30
srm

W.P.A. No. 11973 of 2021
Gopal Sardar & Anr.
Vs.
The State of West Bengal & ors.

Mr. Sounak Bhattacharya,
Mr. Sounak Mondal
....for the Petitioners.

Mrs. Sipra Mazumdar,
Md. Monsur Alam
.....for the State-respondents.

Mr. Kaustav Ratan Chatterjee
...for the Respondent No.4.

None appears on behalf of the respondent Nos.5 to
7.

Disputed questions of facts have emerged on the basis of the report filed by the Pradhan of Taladi Gram Panchayat, District-24-Parganas (South). It appears from the report that the petitioners had admitted that they had not left a 3 ft. wide passage as the mandatory side space, as per the Rules, while raising their construction.

The petitioners deny such allegation, and submit that no such admission had been made.

Next contention of the gram panchayat is that the petitioners have not come up with clean hands as the

petitioners have challenged a construction by the respondent Nos.5 to 7, without having complied with the law and without taking permission for their own construction. The respondent Nos. 5 to 7 have the requisite permission.

The third issue is that the respondent Nos.5 to 7 had taken permission for their construction and was also permitted by the adjacent owner to make a construction leaving only 1.5 ft. instead of 3 ft., vacant side space.

Mr. Bhattacharya, learned Advocate appearing on behalf of the petitioners, submits that their construction was in 2002 and the Pradhan had allowed such construction. He submits that the application form as per the rules had not come into force at the relevant point of time. According to him, acknowledgement by the Pradhan was sufficient permission. He further submits that the question of granting consent for the construction by the respondent Nos.5 to 7 thereby permitting them to leave only 1.5 ft. gap from the petitioners' construction did not arise as the petitioners have been objecting to such construction from the very beginning.

It appears that the report, which was prepared by the Pradhan, was on the basis of the documents and oral submissions, but there has been no inspection and the

parties had not filed any written version either admitting or denying the allegations.

Under such circumstances, this Court is of the view that the issue must be decided afresh and in accordance with law. The concerned gram panchayat shall dispose of the allegations of the petitioner contained in the objection dated January 8, 2020 in accordance with law. While doing so, all the issues including whether the petitioners had come up with clean hands and had the permission from the gram panchayat to construct, shall also be taken into account. The gram panchayat shall adhere to the following procedure:-

- a) An inspection of both the sites shall be conducted.

Such inspection shall be held in the presence of all interested parties, with 48 hours advance notice to the petitioners and all interested parties and also the respondent Nos.5 to 7.

- b) Reports of the inspection shall be prepared along with the sketch maps, indicating the extent of deviation, if any by both parties. The reports of the inspection shall also indicate the measurements of the structures of both the parties and vacant space, which has been left by the parties while raising their respective constructions.

- c) Such reports shall be handed over to the petitioners as also the respondents.
- d) A hearing shall be given to the parties. 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.
- e) 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, 1973, in respect of both the constructions.

The entire exercise shall be completed within a period of four 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.)