

07.09.2022
Court No. 19
Item no.16
CP

W.P.A. No. 12765 of 2021

Avijit Bhandary

Vs.

Haripal Ashutosh Gram Panchayat & Ors.

Mr. Prosenjit Barman

...for the petitioner.

Despite service none appears on behalf of the respondent no. 6.

The petitioner submits that the respondent no. 6 has made a construction in the absence of any permission from the concerned panchayat authority, and the vetting authority. It is alleged that the construction is more than 20 ft. in height and, as such, the plan was to be sanctioned only after the concerned vetting authority would approve the same.

Reliance has been placed on Rule 27(1A) of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 (hereinafter referred to as 'the said Rules').

The further allegation of the petitioner is that the said construction is in violation of the rules as the mandatory open spaces required to be kept under the said rules, had not been kept vacant.

Without going into the merits of the claim of the petitioner and without deciding the issues, the writ petition is disposed of with a direction upon the panchayat authorities of the Haripal Ashutosh Gram Panchayat to consider and dispose of the representation of the petitioner dated March 9, 2021 being Annexure P-4, in accordance with law. 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 no. 6. An advance notice of the inspection shall be served upon the petitioners and the respondent no. 6 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 no. 6. 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.

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 sanction, contrary to Rule 27(1A) of the said Rules or in violation of the sanction plan and the building rules by not leaving the mandatory side space, vacant.

Accordingly, the writ petition is disposed of.

A copy of the writ petition along with a server copy of this order shall be served upon the concerned gram panchayat.

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.)