

05.09.2022
Court. No. 19
Item 15 (ML)
Cp

W.P.A. No. 11552 of 2022

Sadak Ali Halder
Vs.
The State of West Bengal & Ors.

Mr. Lakshminath Bhattacharya
... for the petitioner.

Mr. Masud Karim
... for the respondent nos. 13 & 14.

Ms. Sima Adhikari
Mr. Kapil Guha
...for the State.

The petitioner alleges unauthorized construction. According to the petitioner, the construction has been made without a sanction plan. Reference is made to an answer furnished by the Pradhan of the Lalpur Gram Panchayat in this regard, to the petitioner, under the Right to Information Act. A complaint has been filed before the Lalpur Gram Panchayat.

Learned advocate for the respondent nos. 13 and 14 submits that there is no new construction. That the construction which has been impugned before this court, has been in existence since long, much before the promulgation of the West Bengal Panchayat Act, 1973. The construction had been made by their

forefathers. Photographs of such construction have been handed over. It is also submitted that a civil suit is pending between the parties being Title Suit No. 289 of 2019 and there is an order of injunction.

Without going into the merits of the claims of the respective parties, the writ petition is disposed of by directing the concerned gram panchayat to dispose of the complaint of the petitioner. The concerned gram panchayat shall dispose of the same, in accordance with law and independently.

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. 13 & 14. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 13 & 14 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. 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. Also, the age of the building and whether such building existed prior to the promulgation of the West Bengal Panchayat Act shall also be decided. Expert opinion with regard to the age of the building shall be sought for, by the gram panchayat. Such opinion shall be a part of the report.
- e) A hearing shall be given to the petitioner and the respondent nos. 13 & 14. 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, 1973. 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.

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.)