

02.05.2022
Court No. 19
Item no.18
CP

W.P.A. No. 12991 of 2021

Avijit Sarkar
Vs.
The State of West Bengal & Ors.

Mr. Dhillon Sen Gupta
Mr. Saurov Mallick
...for the Petitioner.

Mr. Raja Saha
Mrs. Rupsha Chakraborty

...for the State.

Mr. Arijit Bardhan
Mr. R. D. Gupta

....for the respondent nos. 6 to 8.

The petitioner alleges unauthorized construction on Plot No. 837 pertaining to L.R. Khatian Nos. 385 and 392 of Mouza – Chotomollakhali, J.L. No. 100.

According to the petitioner, the respondent nos. 6 to 8 have raised such constructions without any permission from the competent authority. Complaints were filed before the authority of the Chotomollakhali Gram Panchayat (hereinafter referred to as 'the gram panchayat'). The gram panchayat failed to take steps on the basis of such complaint. Hence the writ petition.

Records reveal that on an earlier occasion the petitioner had approached this court by filing WPA

6906 of 2020, which was disposed of by directing the gram panchayat to make an enquiry as to whether there was any unauthorized construction or not. It was further directed that in the event the gram panchayat detected such unauthorized construction, then steps should be taken in accordance with law.

Aggrieved by further inaction of the authority, this writ petition has been filed. The petitioner prays that the authority be directed to demolish the unauthorized constructions made by the respondent nos. 6 to 8. Claim of ownership and title in respect of the said land has also been made in the writ petition.

Mr. Bardhan, learned advocate appearing on behalf of the respondent nos. 6 to 8, denies such allegations. He submits that the petitioner has not annexed any deed of conveyance or any title deed in support of his claim as to the ownership of the land. The only contention of the petitioner is that the authorities have not considered the complaint of the petitioner, and as such, the prayers cannot be granted in mandatory form.

Learned advocate for the State respondents submits that the panchayat authorities must act and proceed in accordance with law.

Having heard the rival contentions of the parties, this court is of the opinion that neither the

claim of the petitioner with regard to title nor the allegations of encroachment on the said land can be gone into by this court. The panchayat authorities cannot also decide these issues.

However, the only issue that can be decided by the panchayat authorities is whether there has been any construction without permission or sanction or approval from the authorities or in violation of the building rules.

Under such circumstances, the writ petition is disposed of with a direction upon the competent authority of the gram panchayat to dispose of the complaint of the petitioner dated July 2, 2021 made through his learned advocate in accordance with law. While doing so, the panchayat authorities shall adopt the following procedure:

- a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence of the parties, with 48 hours advance notice to the petitioner and the respondent nos. 6 to 8. If the parties are not available for service of the notice, the notice shall be affixed at a conspicuous place at the premises in question.
- 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 the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- d) Such report shall be handed over to the petitioner as also the respondent nos. 6 to 8.
- e) A hearing shall be given to the petitioner and respondent nos. 6 to 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.
- 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 the statute.

The court has not gone into the merits of the claims and counter-claims of the parties and the issues shall be decided independently.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

As no affidavit has been called for, allegations are deemed to have been denied.

The writ petition is, thus, disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)