

S/L 2
06.09.2022
Court. No. 19
sn

W.P.A. 11736 of 2022

Mustafa Kamal & Anr.
VS
The State of West Bengal & Ors.

Mr. N.C. Mondal
Ms. Mousumi Chatterjee
Mr. C. Chakraborty

...for the Petitioners

Mr. Shamim Ahmed
Mr. Arka Maiti
Ms. A. Khatun

..for the respdts.6&9

Mr. N.C. Bhandari
Ms. Sujata Ghosh

..for the State

Affidavit-of-service filed in Court today, be kept with the records.

The petitioners allege that the respondent nos. 6 to 9 have been constructing on a land of which the petitioners are the recorded owners. Reliance has been placed on a complaint lodged before the Pradhan, Haroa Gram Panchayat dated June 13, 2022, inter alia, stating that the said respondents had raised unauthorised constructions on the said land.

The petitioners are aggrieved because the Pradhan has not taken any steps .

Mr. Ahmed, learned advocate appearing on behalf of the respondent nos. 6&9 submits that on similar grounds and for similar reliefs, Title Suit No. 269 of 2022 has been filed by the petitioners. According to Mr.Ahmed, parallel

proceedings cannot be allowed. He places reliance on the prayers in the plaint.

Learned advocate for the State respondents submits that the appropriate authority would be the Pradhan to decide the issue of unauthorised construction.

Having heard the learned advocates for the respective parties, this Court agrees with Mr.Ahmed's contention to the extent that the issues of encroachment, title and possession etc. cannot be gone into either by this Court or by the panchayat authorities. The same shall be decided in the pending suit. Prayer for injunction cannot be indirectly allowed by the Writ Court either. No order can be passed with regard to the reliefs which form the subject matter of the civil suit. However, there is an allegation that the construction is illegal. This aspect can only be gone into by the gram panchayat, in terms of Section 23(5) of the West Bengal Panchayat Act, 1973 and not by the civil court. This Court deems it fit to relegate the entire matter before the gram panchayat for a decision whether the construction is in absence of petitioner or in violation of the plan or contrary to the rules.

The concerned Gram Panchayat is directed to dispose of the complaint of the petitioners only with regard to the allegation of illegality of the construction. Such decision shall be in accordance with law.

While disposing of the complaint, the following procedure shall be adhered to:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent nos.6 to 9 within three weeks. Advance notice of the inspection shall be served upon the petitioners and the respondent nos.6 to 9. If the parties are not available to accept notice, the authorities shall affix the notices of hearing and inspection at conspicuous places in their 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 had been 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.6 to 9. 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, shall 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 the West Bengal Panchayat Act, 1973.

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 learned advocates' communication.

(Shampa Sarkar, J.)