

05.09.2022
Court. No. 19
Item 17 (ML)
Cp

W.P.A. No. 11779 of 2022

Chandan Mishra & ors.
Vs.
The State of West Bengal & Ors.

Mr. Sanjib Das
... for the petitioners.

Mr. S. Das
Mr. S. Ghorai
Ms. Krishna Yadav

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

Mr. Rajarshi Basu
Mr. Parikshit Goswami

...for the State.

The petitioners allege illegal construction. According to the petitioners, the construction has been made partly on the land of the petitioners, without any sanction and in violation of the Building Rules.

Learned advocate for the respondent nos. 6 to 8 submits that the construction was made on the basis of the sanction granted by the concerned gram panchayat on January 20, 2021. Accordingly, the construction has been raised strictly in accordance with the sanctioned plan.

The petitioners submit that the question of violation of the Building Rules and the extension of the

construction into the mandatory side open spaces, in violation of the rules, are required to be gone into.

Considered the rival contentions of the parties. As the petitioners have filed a complaint before the Pipulberia-I Gram Panchayat with specific allegations of violation of the rules and regulations, the panchayat authorities shall act and proceed in accordance with law and dispose of the complaint of the petitioners dated June 16, 2022. The following procedure shall be adopted:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent nos. 6 to 8. An advance notice of the inspection shall be served upon the petitioners and the respondent nos. 6 to 8 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 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. 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 in violation of the sanction plan or in violation of the building rules and without leaving the mandatory side space.

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.)