

15.09.2022
Court No. 19
Item no.09
CP

W.P.A. No. 13116 of 2021
Sri Banamali Mahapatra
Vs.
The State of West Bengal & Ors.

Mr. Ziaul Haque
Mr. Manish Kumar Das
.....for the petitioner.

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee
....for the State.

Mr. Balailal Sahoo
...for the respondent no. 6.

The petitioner alleges that the respondent no. 6 had raised certain unauthorized construction forcefully and illegally, on Plot No. 1843 of Mouza – Khejuri, pertaining to Khatian No. 1039. The petitioner claims ownership of the said plot. The allegation of encroachment has also been made.

Learned advocate for the respondent no. 6 submits that the issues with regard to the right, title and interest and alleged encroachment, cannot be decided by the writ court. He further submits that the panchayat authorities are also not authorized by law to decide on such issues. The respondent no. 6, claims to be a co-sharer in respect of the plot in question.

Learned advocate for the State respondents have handed over an instruction prepared by the Officer-in-charge, Talpatighat Coastal Police Station. It appears that on the basis of a general diary which was registered in the said police station, an enquiry was made. The police authorities visited the spot. The father of the respondent no. 6 was present. The father was asked to produce documents with regard to the construction. Such documents could not be produced.

Without going into the correctness of the allegations of the petitioner and also the correctness of the findings of the police authorities, this court grants liberty to the petitioner to file a proper complaint before the concerned gram panchayat with his allegations. If such complaint is filed, the same shall be disposed of by the competent authority of the Khejuri No. 3 Gram Panchayat, 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 petitioner 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.

The entire exercise shall be completed within a period of four months from the date of receipt of the application.

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 permission and/or in violation of the building rules and the relevant laws.

A copy of the writ petition along with a server copy of this order be served upon the concerned gram panchayat for necessary compliance 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.)