

S/L 2
29.09.2022
Court. No. 19
GB

W.P.A. 13276 of 2021

Md. Year Ali Khan & Anr.
VS
The State of West Bengal & Ors.

*Mr. Animesh Mookerjee,
Md. Ali Ahasan.*

...for the Petitioners.

*Mr. Raja Saha,
Ms. Tanusri chanda.*

...for the State.

*Mr. Prakash Ch. Mondal,
Mr. Debabrata Mandal.*

...for the Respondent Nos.9 to 13.

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

The petitioners allege that the respondent nos.9 to 13
have raised certain constructions without any permission
from the Bodra Gram Panchayat. It is alleged that such
construction is being raised on Plot No.1808 of Mouza-
Eranda, Police Station – Bhangore, District – South 24
Parganas.

The learned advocate for the respondent nos.9 to 13
submits that the petitioners do not have any right, title and
interest in respect of the said land in question. It is the
specific contention of the said respondents that the
allegations are false and frivolous. The attention of the Court
is drawn to the facts that, the proceedings initiated before
the concerned Block Land and Land Reforms Officer for
correction of the record of rights have also not been
entertained.

The issue in this proceeding is not with regard to the title, possession and claims of the parties in respect of their ownership. All that this Court is inclined to interfere with, is the determination of the question of unauthorized construction. A citizen can always complain of inaction of a statutory body, in case such body has failed to discharge its duty under the law. The panchayat authorities are bound to ensure that constructions are made in accordance with the provision of Section 23 of the West Bengal Panchayat Act, 1973 read with the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004. The petitioners drew the attention of the panchayat authorities to the alleged unauthorized construction by the respondent nos.9 to 13. Such complaint of the petitioners has not yet been disposed of. The panchayat authorities are duty bound to act and proceed in accordance with law.

Under such circumstances, without going into the merits of the claims and counter-claims of the parties as to the right, title and possession of the parties in respect of the land in question, the writ petition is disposed of with a direction upon the Bodra Gram Panchayat to dispose of the representation of the petitioners, which is Annexure-P/3 at Page-34 of the writ petition, 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 petitioners and the respondent nos.9 to 13. An advance notice of

the inspection shall be served upon the petitioners and the respondent nos.9 to 13 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.
- e) A hearing shall be given to the petitioners and the respondent nos.9 to 13. 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 of the petitioners 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.)