

S/L 24
05.09.2022
Court. No. 19
GB

W.P.A. 12768 of 2022

Ananda Halder
VS
The State of West Bengal & Ors.

Mr. Lakshminath Bhattacharya.

...for the Petitioner.

*Mr. Susanta Pal,
Mr. Ananda Dulal Sarkar.*

...for the State.

Mr. Gobinda Chandra Baidya.

...for the Respondent Nos.13 & 14.

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

The petitioner alleges unauthorized construction by the respondent nos.13 and 14. According to the petitioner, the said construction has been made without any permission. It is submitted that the construction has been made in violation of the rules and without keeping the mandatory side spaces vacant. He also submits that there is a dispute with regard to the use of an alleged common space.

The learned advocate for the respondent nos.13 and 14 allege that the petitioner has proceeded on the basis that the said respondents do not have a sanction from the authority. The allegation of violation of the rules and encroachment into the mandatory side spaces, have not been made in the writ petition. He further submits that the petitioner has tried to improve his case during the hearing of the writ petition. He also submits that the construction has been made with the permission from the panchayat authority in accordance

with the permission/plan. He denies the allegations. It is the specific contention of the learned advocate for the respondent nos.13 and 14 that the petitioner has also constructed beyond his plan.

Per contra, learned advocate for the petitioner draws attention to the complaint, which is Annexure-P/5 to the writ petition. It appears from the said complaint that the allegation of not maintaining the adequate side space as per the rules, have been averred.

The issue with regard to the use of the common space and the disputes with regard to title, encroachment, boundary, etc., cannot be gone into.

The panchayat authority shall dispose of the complaint of the petitioner, strictly in accordance with law by restricting the determination to the allegation of construction without leaving the mandatory side space and the allegation of construction beyond the sanction plan.

While doing so, the following procedure shall be adhered to:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos.13 and 14 within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondent nos.13 and 14. 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 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.13 and 14. 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 Section 23 (5) of the West Bengal Panchayat Act, 1973.

This Court has not gone into the merits of the claims and counter-claims of the parties. The entire issue shall be decided by the concerned authority 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 learned advocates' communication.

(Shampa Sarkar, J.)