

05.09.2022
Sl. No.25
srm

W.P.A. No. 13010 of 2022
Narugopal Bhunia
Vs.
The State of West Bengal & ors.

Mr. Siddhartha Sarkar
.....for the Petitioner.

Mr. Himadri Sikhar Chakraborty,
Mr. Arunava Maiti
.....for the State-respondents.

Mr. Sayanta Hazra
...for the Respondent No.5.

Affidavit-of-service is taken on record.

The petitioner has filed a complaint before the Pradhan, No. 4, Khanamohan Gram Panchayat, District-Paschim Medinipur. According to the petitioner, the respondent No.5 had raised a construction without any plan and in violation of the rules.

The learned Advocate for the respondent No.5 submits that the construction has been made upon taking permission from the competent authority. It is further submitted that the petitioner had been continuously disturbing the peaceful possession of the respondent No.5. Consequently, a complaint was lodged before the Sub-Divisional Officer, Kharagpur. The Sub-Divisional Officer,

Kharagpur requested the Block Land and Land Reforms Officer, Debra, Paschim Medinipur to make an enquiry and take necessary action as per law.

The Block Land and Land Reforms Officer, Debra filed a report before the Sub-Divisional Officer, Kharagpur, *inter alia*, stating that the respondent No.5 was a legal heir in respect of Plot No.210 of mouza Jesua, which had been classified as '*bastu*'. The land had been recorded in the name of Narayan Chandra Bhunia. The heirship certificate was given by the Khanamohan Gram Panchayat.

As per the enquiry, it appeared that the construction was on plot No.210.

It is submitted by the learned Advocate for the respondent No.5 that the petitioner does not have any right, title and interest over plot No.210. He refers to an admission in this regard by the petitioner. It is submitted by the respondent No.5 that the construction has been made in accordance with the PMAY scheme. The plan provided by the competent authority as per the scheme, had been followed. According to the respondent No.5, Rule 19 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 exempts all constructions under a government project or scheme from the applicability of the said Rules. As such, according to the respondent

No.5, the writ petition should not be entertained on the allegation of unauthorised construction.

Be that as it may, the issue in this writ petition is not whether the petitioner is the rightful owner in the plot No.210. The writ petition is restricted to the allegation of unauthorised construction.

Having considering the rival contentions of the parties, the writ petition is disposed of with a direction upon the concerned gram panchayat to dispose of the representation of the petitioner dated June 10, 2022 in accordance with law upon only determining whether the construction of the respondent No.5 has been in accordance with the plan provided under the PMAY scheme.

The Court has not decided the issue on merits but relegates the matter to the authority under the provisions of Section 23 of the West Bengal Panchayat Act, 1973, for a decision. While doing so, the gram panchayat shall adhere to the following procedure:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent No.5, with 48 hours advance notice to the petitioner and the respondent No.5.

- b) The report of inspection shall be prepared along with the sketch map, indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also the interested parties.
- d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and is continuing, the authorities may take interim measures by stopping such construction.
- e) A hearing shall be given to the petitioner and all other interested parties. 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.
- 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 provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

The Court has not gone into the merit of the claims and counterclaims of the parties and the issues 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 writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)