

05.09.2022
Sl. No.26
srm

W.P.A. No. 13190 of 2022
Uttam Kumar Bera
Vs.
The State of West Bengal & ors.

Md. Mokaram Hossain,
Mr. Sandipan Maity
.....for the Petitioner.

Mr. Himadri Sikhar Chakraborty,
Ms. Susnita Saha
.....for the State-respondents.

Mr. Biswajit Sau
...for the Respondent No.10.

Affidavit-of-service is taken on record.

The petitioner alleges unauthorized construction by the respondent Nos.10 to 12. It is the specific contention of the petitioner that the construction has been made by the said respondents, without any authority of law.

The learned Advocate for the respondent No.10 submits that the petitioner does not have any locus to challenge the construction. He submits a blueprint of the sanction plan, which has been granted by the Lakshi Gram Panchayat. It is further submitted that having failed in all the title suits and in their attempts to evict the respondent Nos.10 to 12, this writ petition has been filed with baseless allegation, as the last resort.

It is not in doubt, that the Pradhan of Lakshi Gram Panchayat had permitted a construction by the respondent Nos.10 to 12, on Plot No.7178 pertaining to Khatian No.10472 of mouza Lakshi. Application for permission was filed on November 29, 2021. The meeting was held on November 29, 2021, and permission was granted. It was indicated that the construction should be completed within a year from January 4, 2022.

The construction commenced and was completed. The learned Advocate for the respondent No.10 has also handed over his title deed and orders passed in the civil suits. The record of rights have also been furnished. Thus, the right, title and interest of the respondent Nos.10 to 12 are not in dispute. The allegation of non-grant of permission has not been proved, as the permission is before this Court. The only issue is whether the construction has been made in accordance with the plan/permission granted.

Without going into the merits of the claims and counter-claims of the parties, this writ petition is disposed of with a direction upon the concerned gram panchayat to treat the writ petition as a representation and dispose of the same in accordance with law, independently.

The Court has not decided the issues on merits but has relegated the matter to the authority under the provisions of Section 23 of the West Bengal Panchayat Act, 1973 to decide the issue. The determination in this regard shall only be restricted to whether the construction of the respondent Nos.10 to 12 had in accordance with the plan or not. All other issues raised are not relevant in this proceeding. While doing so, the gram panchayat shall adhere to the following procedures:

- a) An inspection of the site shall be conducted by an authorized engineer. Such inspection shall be held in the presence of all interested parties, with 48 hours advance notice to the petitioner and all interested parties and also the respondent Nos.10 to 12. The notice shall be affixed in the premises, which shall operate as a notice to all.
- b) The report of the 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 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.)