

S/L 31
08.09.2022
Court. No. 19
GB

W.P.A. 14279 of 2021

Uttam Kumar Saha & Anr.
VS
The State of West Bengal & Ors.

Mr. Suman Chakraborty.

...for the Petitioners.

*Ms. Chaitali Bhattacharya,
Mr. Kartick Chandra Kapas.*

...for the State.

*Mr. Gazi Faruque,
Ms. Priyanka Mandal.*

...for the Respondent Nos.10 & 11.

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

The petitioners allege unauthorized construction partially on L.R. Plot Nos.941 and 1100 and on a public road, maintained by the Public Work Department.

The learned advocate for the respondent nos.10 and 11 denies such allegation and submits that on the basis of land records, they have been in possession since long by way of 'patta' and the alleged construction was made much prior to the promulgation of the West Bengal Panchayat Act, 1973.

Without going into the merits of the claims of the respective parties, the writ petition is disposed of by directing the Gurbari-I gram panchayat to dispose of the representation of the petitioner, dated August 9, 2021. The concerned gram panchayat shall dispose of the same, in accordance with law and independently.

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.10 and 11. An advance notice of the inspection shall be served upon the petitioner and the respondent nos.10 and 11 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. Also, the age of the building and whether such building existed prior to the promulgation of the West Bengal Panchayat Act shall also be decided. Expert opinion with regard to the age of the building shall be sought for, by the gram

panchayat. Such opinion shall be a part of the report.

- e) A hearing shall be given to the petitioner and the respondent nos.10 and 11. 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, with regard to the construction on the panchayat area. If it is found that there is an illegal construction and part of such alleged illegal construction either falls on a PWD road or on a highway, which is beyond the jurisdiction of the panchayat authorities, such matter shall be referred to the competent authority by the Pradhan to the extent of encroachment over a PWD road or over the highway road. Thereafter such authority will act and proceed according to the statutes operating in the field for removal of encroachers.

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.)