

22.09.2022
Court No. 19
Item no.17
CP

W.P.A. No. 14479 of 2021

Saleha Begam

Vs.

The State of West Bengal & Ors.

Mr. Mahammad Mahmud

Mr. M. S. Mollah

Ms. Pinki Das

...for the petitioner.

Mr. Sudipto Panda

Mr. Subrata Ghosh

...for the State.

Despite service, none appears either on behalf of the added respondent or the Pradhan. The construction by the added respondent, has been challenged before this court.

As the Court is not inclined to pass mandatory directions as prayed for in the writ petition, but is relegating the entire dispute for adjudication by the competent authority under law, the writ petition is taken up in their absence.

The petitioner alleges that the pradhan, Mandra Gram Panchayat had failed and neglected to take steps even after receiving a complaint in respect of an unauthorized construction.

The petitioner approached the pradhan, Mandra Gram Panchayat by filing a complaint dated

August 25, 2021. The allegations are of violation of the building rules and also construction beyond the permissible limit. It is stated that the mandatory open spaces as required by the rules, have not been maintained. Such construction has allegedly extended to a common passage used for ingress and egress of the petitioner.

Without going into the merits of the claims of the petitioner, the writ petition is disposed of with a direction upon the competent authority of the Mandra Gram Panchayat to consider and dispose of the representation of the petitioner dated August 25, 20221 being Annexure P/8 to the writ petition, 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 petitioner and the respondent no. 7. An advance notice of the inspection shall be served upon the petitioner and the respondent no. 7 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.
- e) A hearing shall be given to the petitioner and the respondent no. 7. 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.

The court has not gone into the merits of the claims.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

The question of title and possession 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 plan or the building rules and the relevant laws.

A copy of the writ petition along with a server copy of this order be served upon the concerned gram panchayat for necessary compliance 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.)