

09.09.2022
Court No. 19
Item no.7(DL)
CP

W.P.A. No. 14432 of 2021

Sk. Samsuddin (Saha)

Vs.

The State of West Bengal & Ors.

Mr. Golam Mastafa
Mr. Samirul Sardar

.....for the petitioner.

Ms. Sima Adhikari
Ms. Kakali Naskar

...for the State.

Affidavit of service is taken on record.

The respondent nos. 6, 7 and 8 are not before
the court.

As the court is not inclined to pass any
mandatory orders as prayed for by the petitioner and
is not entering into the merits of the claim of the
petitioner, the writ petition is taken up in their
absence.

The allegation is that the respondent nos. 7
and 8 have made certain unauthorized construction
on Plot No. 799 and 800 of Mouza – Kharar,
pertaining to L. R. Khatain No. 385. The petitioner
alleges that the said construction was raised, without
any permission from the panchayat authorities.

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 Heriya Gram Panchayat to consider and dispose of the complaint dated July 30, 2021 which is annexure P-2 at page 13 of 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 nos. 7 & 8. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 7 & 8 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 had been 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. 7 & 8. 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 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.

The question of title, possession and boundary 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 plan, or in violation of 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.)