

S/L 18
09.09.2022
Court. No. 19
GB

W.P.A. 14788 of 2021

Sahalam Ali Khan
VS
The State of West Bengal & Ors.

Mr. Debabrata Sardar,
Mr. Mrinal Kanti Maity

...for the Petitioner.

Ms. Sima Adhikari,
Ms. Kakali Naskar.

...for the State.

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

Despite service, none appears on behalf of the respondent nos.5 and 7. As the Court is not entering into the merits of the allegation made by the petitioner against the respondent no.7, but is relegating the matter before the authority empowered by law to determine the issue of unauthorized construction, the writ petition is taken up in their absence.

The petitioner alleges that the respondent no.7 has been raising a construction on L.R. Plot No.1595 of Mouza-Dadpur, without any sanction from the authority. It is the specific contention of the petitioner that a competent civil court has passed an order of status quo with regard to the nature, character and possession of the suit property, till the disposal of the suit. The application for temporary injunction was thus disposed of on contest by the learned Civil Judge (Junior Division), 1st Court at Baruipur.

It also appears that the learned court had passed an order directing the police authorities to implement the order of injunction. The suit is at the stage of trial.

The issue of violation of the ad interim order of injunction shall be decided by the learned civil court. The petitioner is at liberty to approach the learned civil court in accordance with law. This Court has not decided such issue.

The issues, as to whether there has been any construction without a plan or in violation of the building rules and/or in deviation from the building plan, must to be decided by the panchayat authorities.

Under such circumstances, the Sampur-I Gram Panchayat is directed to dispose of the representation of the petitioner dated August 12, 2021, in accordance with law.

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 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. The question of right, title and possession shall not be decided by the panchayat authorities.
- 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, 1973.

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