

7.2.2022
Court No. 19
Item no.6
sn

WPA 15639 of 2021

Masood Ahmed Khan & Ors.
Vs.
The State of West Bengal & ors.

Mr. Bibek Jyoti Basu
Mr. Uttam Kr.Dey
.....for the petitioners
Mr.Subhabrata Datta
Mr. Bani Brata Datta
..for the State

Despite service, none appears on behalf of the respondent nos.4, 5 and 7 to 9. Affidavit of service is taken on record. The matter is dealt with in their absence as the entire issue is being relegated to the competent authority under the law.

Mr. Basu, learned advocate for the petitioners submits that the respondent nos. 7 to 9 have raised and are continuing to raise unauthorised construction on plot nos. 1809,1818,1819 and 1812 of Mouza Mashila, J.L.No.no. 24, Khatian no. 173, P.S. Sankrail, District Howrah. According to Mr. Basu, the petitioners have title over the said plot. It is further submitted that the panchayat authorities have not granted any permission for such construction, but are allowing such construction. That the authorities are deliberately neglecting to dispose of the complaint lodged by the petitioners.

Without going into the merits of the claims of the petitioners, this Court is of the opinion that the writ petition must be disposed of with a direction upon the Pradhan, Mashila Gram Panchayat, District Howrah to take a decision on the complaint of the petitioners dated July 3, 2021 in accordance with law.

While disposing of the writ petition, the panchayat authorities shall adhere to the following procedure:-

a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the parties, within three weeks. Advance notice of the inspection be served upon the petitioners and the respondent nos.7 to 9. If the parties are not available to accept notice, the authorities shall affix the notice of hearing and inspection at conspicuous places in their 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 petitioner as also the respondent nos.7 to 9.

e) A hearing shall be given to the petitioners and the respondent nos.7 to 9. 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 statute. The court has not gone into the merits of the claims and the issues involved shall be decided independently.

g) The question of title, encroachment etc. shall not be gone into by the panchayat authorities.

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 server copy of this order.

(Shampa Sarkar, J.)