

S/L 8  
29.09.2022  
Court. No. 19  
sn

W.P.A.15642 of 2022

Tarun Pradhan & Anr.  
VS  
The State of West Bengal & Ors.

*Mr. Siva Prasad Ghosh*  
*Ms. Debjani Ghosh Roy*

*...for the Petitioners*

*Ms. Sweta Mukherjee*  
*Mr. Prantik Gorai*

*...for the State.*

*Mr. Gourav Ghosh*

*...for the Respondent No.5*

The petitioners allege that the respondent no.5 had raised certain unauthorized construction on an undivided plot of land on LR dag no. 1808, pertaining to Khatian no.2559 of mouza Bibhishanpur.

Learned advocate for the respondent no.5 submits that the construction was done in accordance with law.

It appears that a partition suit is pending and certain orders were passed. However, the stage of the suit and the orders passed therein, are not before this Court.

The issue with regard to title, co-sharership are not relevant for determination of the disputes raised this proceeding.

It is settled law that all constructions on an undivided plot, is subject to the final determination of the shares in the partition suit. No party can claim any equity.

However, in order to raise any construction, permission from the sanctioning authority must be taken.

This writ petition is disposed of with a direction upon the Bibhishanpur Gram Panchayat, to dispose of the representation of the petitioners 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 petitioners and the respondent no.5. An advance notice of the inspection shall be served upon the petitioners and the respondent no.5 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 petitioners and the respondent no.5. 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. The age of the construction shall be ascertained as it is the specific contention of the respondent no.5 that the construction had existed since long.

- 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 date of receipt of the complaint of the petitioner.

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.)**