

14.01.2022
Item No.2
srm

**W.P.A. No. 16460 of 2021
(CAN 1 of 2021)
(CAN 2 of 2021)
Nur Islam Khan & Anr.
Vs.
The State of West Bengal & Ors.**

Mr. Sutrajit Sinha Roy

...for the Petitioners.

Mr. Prantick Ghosh,
Mr. Siddhartha Sarkar

...for the Respondent No.5.

The petitioners have alleged that the respondent No.5 and one Yasim Khan have raised unauthorised construction by encroaching into a land corresponding to L.R. Dag No.2504 pertaining to Khatian No.553, J.L. No.092 within Mouza-Sarishadighi in village Marmuchak, Police Station Kotulpur, Bankura. According to the petitioners, the said land is situated within Kotulpur Gram Panchayat.

It is the specific contention of the petitioners that without obtaining any permission and/or sanction from the permission granting authorities of the said gram panchayat, the construction has been completed. The petitioners allege that despite having raised objections, no steps have been taken by the gram panchayat authorities.

Mr. Ghosh, learned Advocate appearing on behalf of the respondent No.5 and the said Md. Yasin Khan, submits that the construction has been made as per the plan prepared and submitted by his clients before the permission granting authorities. According to Mr. Ghosh, as the panchayat authorities failed and neglected to grant permission within the stipulated period as prescribed under the law, the permission was deemed to have been granted in view of the operation of law and the deeming provision contained therein. He further submits that the question of title and ownership cannot be decided by the panchayat authorities.

Be that as it may, this Court sitting in judicial review cannot decide as to whether there has been any unauthorised construction or not. It is for the panchayat authorities to decide the issues raised by the petitioners.

Under such circumstances, the petitioners shall make a detailed complaint to the concerned gram panchayat within a period of two weeks from date. On receipt of the complaint, the appropriate authority of the gram panchayat shall dispose of the same by adhering to the following directions:

- (a) The competent authority of the aforementioned gram panchayat shall cause an inspection of the premises in question in the presence of all the interested parties in

order to ascertain whether there are any unauthorised constructions and also to ascertain the extent and nature of the unauthorised constriction, if any.

- (b) A copy of the inspection report shall be handed over to the respective parties.
- (c) The petitioners as also the respondent Nos.5 and the said Md. Yasin Khan shall be given a hearing.
- (d) The parties shall be allowed to file their written versions and adduce oral and documentary evidence in support of their respective claims at the hearing.
- (e) A reasoned order shall be passed and communicated to all concerned.
- (f) Needless to mention that the entire proceedings shall be reached to its logical conclusion in terms of Section 23 of the West Bengal Panchayat Act.

In view of the rising pandemic situation, the entire exercise shall be completed within a period of eight months from the date of communication of this order.

If it is found that the construction is going on illegally, the panchayat authorities shall be at liberty to impose restrictions and take such interim measure as permitted by law.

This Court has not gone into the merits of the claims and counterclaims of the parties and all points will be decided by the panchayat authorities, independently.

This writ petition is, thus, disposed of.

In view of the disposal of the writ petition, the connected applications have become infructuous and those are disposed of accordingly.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)