

05.09.2022
Court. No. 19
Item 33 (ML)
Cp

W.P.A. No. 15983 of 2022

Sri Rasu Santra
Vs.
The State of West Bengal & Ors.

Mr. Animesh Paul
... for the petitioner.

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Das
... for the respondent no. 6.

Ms. M. Chowdhury
Ms. M. Sinha
....for the respondent nos. 2 & 3.

Mr. Bibek Jyoti Basu
Mr. Uttam Kr. De
...for the State.

The writ petition is disposed of with a direction upon the competent authority of the Howrah Zilla Parishad to consider the representation of the petitioner dated June 27, 2022 and pass a reasoned order in accordance with law. In doing so, the parties shall be heard and the following procedure shall be adhered to:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no. 6. An advance notice of the inspection shall be

served upon the petitioner and the respondent no. 6 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 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 parties.
- e) The contention of Mr. Mukherjee's client that the construction was made prior to the coming into force of the West Bengal Panchayat Act, 1973, shall also be taken into consideration and the age of the construction shall be determined, as it is specifically pointed out by the learned advocate for the said respondent no. 6, that at the time of construction of the said tile shed structure, the laws and the regulations had not come

into force. The age of the structure shall be determined by taking the aid of experts, which shall also form a part of the inspection report.

- f) A hearing shall be given to the petitioner and the respondent no. 6. 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.
- g) 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.

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 building rules.

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.)