

06.04.2022
Sl. No.13
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W.P.A.16999 of 2021

**Sanjay Malik & anr.
Vs.
The State of West Bengal & ors.**

Mr. Soumen Bhattacharya
... for the petitioners

Ms. Dipanwita Ghosh Chaudhuri
... for the State

Ms. Majuli Chaudhuri
Ms. Mekhla Sinha
... for the respondent nos.2 & 3

Mr. Kushol Chatterjee
Mr. Tauhid Khan
... for the respondent nos.9 & 10

The petitioners allege that the respondent Nos. 9 and 10 have made some constructions over R.S. Dag No.427, L.R. Dag No.464, pertaining to L.R. Khatian No.571 within Mouza Andul, J.L. No.29, without any sanction and over a pond.

The respondent nos. 9 and 10 deny such allegation. They submit that no construction has been made over any pond.

Under such circumstances, in view of the disputed question of facts, this Court is of the opinion that the competent authority of Howrah Zilla Parishad, who is the permission granting authority, shall take steps in accordance with law, by disposing of the representation of the writ petitioners dated

June 24, 2021 in accordance with law and reach the same to its logical conclusion. The authority must arrive at a conclusion as to whether the allegations made by the petitioner were correct or not. While doing so, the following procedure shall be adopted:-

- a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent nos.9 and 10, within three weeks. Advance notice of the inspection shall be served upon the petitioners and the respondent nos.9 and 10. If the parties are not available to accept notice, the authorities shall affix the notices 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 interim measures by stopping such construction.
- c) A 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, if prepared, shall be handed over to the parties.
- e) A hearing shall be given to the petitioners and the respondent nos.9 and 10. 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 the parties shall be decided. All documents filed by the parties, if any, shall be exchanged.
- 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 counter-claims of the parties and the issues involved shall be decided independently. The question of title, boundary dispute and allegation of encroachment shall not be gone into.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

With the above observations, this 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 learned advocate's communication.

(Shampa Sarkar, J.)