

05.09.2022
Court. No. 19
Item 35 (ML)
Cp

W.P.A. No. 16266 of 2022

Zakir Hossain Molla
Vs.
The State of West Bengal & Ors.

Mr. Sounak Bhattacharyya
Mr. Sounak Mondal
... for the petitioner.

Mr. Sandip Das
....for the respondent nos. 5 to 7.

Mr. Malay Krishna De
Mr. Biswajit Dutta
...for the State.

The petitioner alleges that despite an order of this court passed in WP 9821 (W) of 2016, the authorities of Dhamua South Gram Panchayat had not taken any steps.

None appears on behalf of the panchayat authorities.

Learned advocate for the respondent nos. 5 to 7 denies the allegations.

It appears that after the order was passed, the West Bengal Panchayat Act was amended and Section 23(5) came into force. Section 23(5) reads as follows:

“ (5) Where any new structure or new building or any addition to any structure or building is being or has been erected or made, as the case may be, in contravention of the

provisions of sub-section (1), the permission granting authority shall refer the matter to the Sub-Divisional Officer concerned who may after giving the owner of such building an opportunity of being heard, make an order directing the demolition of the building or a portion of the building, as the case may be, by the owner within such period as may be specified in order and in default, the Sub-Divisional Officer may itself effect the demolition and impose a fine as may be specified by the State Government and recover the cost thereof from the owner as a public demand.”

Under such circumstances the writ petition is disposed of with a direction upon the competent authority of the concerned gram panchayat to act in accordance with law and dispose of the writ petition by treating the same as a representation. While doing so 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 nos. 5 to 7. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 5 to 7 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) A hearing shall be given to the petitioner and the respondent nos. 5 to 7. 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.
- 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 Section 23 of the West Bengal Panchayat Act, 1973. 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.

A copy of the writ petition along with a server copy of the order be served upon the concerned respondents.

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.)