

05.09.2022
Court. No. 19
Item 36 (ML)
Cp

W.P.A. No. 16377 of 2022

Jakir Hossain
Vs.
The State of West Bengal & Ors.

Ms. Sayani Ahmed
... for the petitioner.

Mr. P.P. Roy
....for the respondent nos. 10 & 11.

Mr. Sudipto Panda
Ms. Munmun Tewary
...for the State.

The petitioner claims to be a tenant in respect of a shop room which was purchased by the respondent nos. 10 and 11. It is alleged that after such purchase, some construction has been made above the shop room. Such construction was dangerous as the same had been erected above a dilapidated roof. Reliance has been placed on a report filed by the Nirman Sahayak, Berachampa – I Gram Panchayat before the Block Development Officer, Deganga Development Block. It has been stated in the report that no approval/permission for such construction had been taken from the concerned Berachampa – I Gram Panchayat.

Mr. Roy, learned advocate for the respondent nos. 10 & 11, submits that the area

covered by the building and the size of the building were beyond 10,000 sq. ft. An application was filed before the Deganga Panchayat Samity for permission. As no communication was received from the concerned panchayat samity, by invoking the provisions of deemed sanction, the construction was completed. A copy of the application filed before the panchayat samity is before the court.

Learned advocate for the petitioner submits that such application would not suffice as the proper procedure would be to apply before the panchayat authorities for permission and the panchayat authorities would send the application with all the documents to the panchayat samity for vetting. Thereafter, upon such vetting, necessary sanction would be given.

The State respondents submit that the Block Development Officer upon an enquiry, came to the conclusion that there was no sanction in respect of the said building.

Under such circumstances, the writ petition is disposed of with a direction upon the competent authority of the Berachampa – I Gram Panchayat to dispose of the representation of the petitioner, made through his learned advocate

dated July 7, 2022. 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 petitioner and the respondent nos. 10 & 11. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 10 & 11 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. 10 & 11. 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 contention of the respondent nos. 10 and 11 that the construction was made by invoking the provisions of deemed sanction, shall also be considered.

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.)