

16.09.2022
Court No. 19
Item no.10
CP

W.P.A. No. 17281 of 2021

Sri Bharat Pradhan

Vs.

The State of West Bengal & Ors.

Mr. Kamal Mishra
Mr. Pratap Safui
Mr. Subhadeep Maitra

.....for the petitioner.

Mr. Prasanta Kr. Giri
Mr. Avishek Prasad

....for the State.

Affidavit of service is taken on record.

Despite service none appears on behalf of the
respondent nos. 7 and 10.

As the Court is not inclined to pass mandatory
directions as prayed for in the writ petition, but is
relegating the entire dispute for adjudication by the
competent authority under law, the writ petition is
taken up in their absence.

The petitioner alleges that the respondent no.
10 had raised a construction by encroaching upon a
portion of the land of the petitioner. According to the
petitioner, the respondent no. 10 does not have any
sanction to raise the construction. It is further
alleged that the mandatory vacant space as per the
building rules has not been maintained. The

petitioner also submits that a representation dated July 22, 2021 alleging unauthorized construction was filed, but the same has not been acted upon.

Without going into the merits of the claims of the petitioner, the writ petition is disposed of with a direction upon the competent authority of the Garbari Gram Panchayat –II to consider and dispose of the representation of the petitioner dated July 22, 2021, being Annexure P-3 to the writ petition, in accordance with law and independently. If it appears that the permission granting authority is the Zilla Parishad, then the matter will be referred to the Zilla Parishad.

The following procedure shall be adopted by the permission granting authority, while disposing of the matter:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no. 10. An advance notice of the inspection shall be served upon the petitioner and the respondent no. 10 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 no. 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 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 West Bengal Panchayat Act. 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 and the relevant laws.

A copy of the writ petition along with a server copy of this order be served upon the concerned gram panchayat for necessary compliance of this order.

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.)