

22.09.2022
Court No. 19
Items 19 & 20
CP

W.P.A. No. 17626 of 2021

Nirmal Kumar Bera

Vs.

The State of West Bengal & Ors.

with

W.P.A. No. 19596 of 2021

Gopanwita Pradhan Karar

Vs.

The State of West Bengal & ors.

Mr. Gouranga Kumar Das

Ms. Swati Mandal

...for the petitioner in
W.P.A. No. 17626 of 2021.

Mr. Sandip Das

...for the petitioner in
W.P.A. No. 19596 of 2021

Mr. Susanta Pal

Ms. Ananya Neogi

...for the State.

Mr. Tamal Tanu Panda

....for the pradhan.

Both these writ petitions are taken up together
as common questions of fact and law arise.

The only question to be determined in these
two writ petitions is whether the Pradhan,
Pratapadityanagar Gram Panchayat, had the
authority under the law to direct demolition of the
structure of the respondent no. 7 in W.P.A. No.
17626 of 2021. The complainant, namely, Nirmal

Kumar Bera had alleged that the construction of respondent no. 7 was unauthorized and had prayed for directions upon the authorities to initiate proceedings for demolition.

By filing WPA 19596 of 2021, respondent no. 7 in W.P.A. No. 17626 of 2021, has challenged the order of demolition passed by the pradhan.

Section 23(5) of the West Bengal Panchayat Act, 1973 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 procedure followed by the Pradhan, Pratapadityanagar Gram Panchayat directing demolition is not in accordance with law. The order of demolition dated November 16, 2021, is set aside and cancelled.

The complaint of Nirmal Kumar Bera shall be decided afresh in accordance with law.

While doing so, the following procedure shall be adopted by the panchayat authorities of the Pratapadityanagar Gram Panchayat:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the contesting parties of both the writ petitions. An advance notice of the inspection shall be served upon the 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 or contrary to the rules 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 contesting parties and others. 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 Section 23(5) of the West Bengal Panchayat Act.

The court has not gone into the merits of the claims.

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 petitions are 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.)