

S/L 22
16.09.2022
Court. No. 19
GB

W.P.A. 17818 of 2021

Sk. Gaziar Rahaman & Ors.
VS
The State of West Bengal & Ors.

*Mr. Sani Hossain,
Ms. Salma Sultana Shah,
Mr. Miraj Hossain.*

...for the Petitioners.

*Sk. Abu Abbas Uddin,
Mr. Nahid Rahman.*

...for the Respondent Nos.7 to 9.

Affidavit-of-service filed in Court today, be kept with the record.

The writ petition is disposed of on a short campus. All that the panchayat authorities have to do, is to ascertain whether there has been any construction on L.R. Dag Nos.4778 and 4779 of Mouza-Nababpur, without permission and/or in violation of the law and the rules.

The petitioners allege that the construction is being made on a pond. With regard to their allegation, the petitioners are at liberty to approach the appropriate authority under the law. However, the allegation of unauthorised construction, that is, construction in the absence of a plan and in violation of the rules, has to be decided by the panchayat authorities in terms of Section 23(5) of the West Bengal Panchayat Act, 1973.

It appears that the petitioners approached the Pradhan, Nababpur Gram Panchayat through their leaned advocate by filing a representation dated October 13, 2021. The said representation shall be disposed of in accordance with law.

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 petitioners and the respondent nos.7 to 9. An advance notice of the inspection shall be served upon the petitioners and the respondent nos.7 to 9 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 had been 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. The question of right, title and possession shall not be decided by the panchayat authorities.
- e) A hearing shall be given to the petitioners and the respondent nos.7 to 9. 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, 1973.

The court has not gone into the merits of the claims of the petitioners and the issues involved shall be decided independently.

The entire exercise shall be completed within a period of 12 weeks from date of communication 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.)