

S/L 71
16.09.2022
Court. No. 19
sn

W.P.A. 19155 of 2021

Samsuddin Molla
Vs.
The State of West Bengal & Ors.

Mr. Debashis Banerjee
Mr. Supreem Naskar ..for the petitioner

Mr. Prasanta Giri
Mr. Benazir Ahmed ..for the State

Despite service, none appears on behalf of the respondent nos.7-15. Affidavit-of-service filed in Court today, be kept with the records. As this Court is not entering into the merits of the claims of the petitioner and the matter is being relegated to the appropriate authority empowered by law to deal with the issue of unauthorized construction, this writ petition is taken up in their absence.

The petitioner prays for a direction upon the permission granting authority/Durgapur Gram Panchayat to dispose of the representation of the petitioner dated September 2, 2021. In the said representation, the petitioner has alleged encroachment, denial of the title of the petitioner and illegal construction by the respondent nos. 7 to 15, in violation of the order of the civil court.

However, neither the Writ Court nor the panchayat authorities is empowered under the law to decide the questions of title, encroachment and also the allegation of violation of the order of the civil court. The issue with regard

to the violation of the order of the civil court, must be decided by the said court.

The petitioner is always at liberty to approach the civil court, in accordance with law.

Although, it is submitted from the bar that the private respondents do not have any permission from the permission granting authority, the Writ Court is not in a position to decide such issue. Such pleadings are also missing. Thus, the petitioner is granted liberty to approach the permission granting authority, in accordance with law, indicating the nature of illegality in the construction. If such approach is made, the representation of the petitioner shall be disposed of, in accordance with law, by the permission granting authority.

While disposing of the complaint, 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.8-15 within three weeks. Advance notice of the inspection shall be served upon the petitioners and the respondent nos.8-15. If the parties are not available to accept notice, the authorities shall affix the notices of hearing and inspection at conspicuous places in their 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.

e) A hearing shall be given to the petitioner and the respondent nos.8-15. 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, shall 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, 1973.

g) The question of right, title, interest and encroachment shall not be gone into.

The entire exercise shall be completed within a period of four months from the 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 learned advocates' communication.

(Shampa Sarkar, J.)