

S/L 19
02.03.2022
Court. No. 19
GB

W.P.A. 19455 of 2021

Dulal Giri & Anr.
VS
The State of West Bengal & Ors.

*Mr. Soumen Kumar Dutta,
Mr. Subhadeep Chatterjee,
Ms. Arpita Kundu.*

...for the Petitioners.

*Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata.*

...for the State.

*Mr. B.K. Dey,
Mr. A. Banerjee.*

...for the Respondent Nos.6 & 7.

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

The petitioners have alleged that the respondent nos.6 and 7 have raised some unauthorized constructions on Plot No.30, Mouza-Baghadari, which originally belonged to Atul Rana and Paban Rana. The petitioners and the respondent nos.6 and 7 claim through the original owners. It is submitted that the plot is an unpartitioned plot and the respondent nos.6 and 7 have constructed on a portion of the said plot without obtaining proper sanction from the panchayat authorities.

Mr. Dey, learned advocate appearing on behalf of the respondent nos.6 and 7 submits a copy of the sanction plan granted by the Durmuth Gram Panchayat.

Mr. Dutta, learned advocate appearing on behalf of the petitioners submits that in case of an unpartitioned property, a no objection from other co-sharers was required

to be obtained under the rules, for grant of such sanction by the Gram Panchayat.

Such disputed questions of facts cannot be decided in this proceeding. The petitioners have already lodged a complaint before the Durmuth Gram Panchayat, which is Annexure-P/3 at Page 24 of the writ petition. It also appears that a partition suit is pending between the parties.

Having considered the records, this Court is of the opinion that the entire issue shall be decided by the competent authority of the Durmuth Gram Panchayat under Section 23 of the West Bengal Panchayat Act, 1973.

While disposing of the complaint of the petitioners, the competent authority of the Gram Panchayat shall adhere to the following procedures:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos.6 and 7 within three weeks. Advance notice of the inspection shall be served upon the petitioners and the respondent nos.6 and 7 and all other interested parties. If the parties are not available to accept notice, the authorities shall affix the notice 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 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 petitioners and the respondent nos.6 and 7. 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 statute. 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

Accordingly, the writ petition is disposed of.

There will be however no order as to costs.

All parties are directed to act on the basis of server copy of this order and/or the learned advocate's communication.

(Shampa Sarkar, J.)