

21.12.2022
Sl. No.4(DL)
srm

W.P.A. No. 19133 of 2022

Balaram Sanpui

Versus

The State of West Bengal & Ors.

Mr. Atarup Banerjee,
Mr. Bapin Baidya

....for the Petitioner.

Mr. Jahar Dutta,
Mr. Bipin Ghosh

...for the State-respondents.

Mr. Saumen Gayen,
Mr. Sandipan Maity

...for the Respondent Nos.8-12.

Affidavit-of-service is taken on record.

The petitioner submits before this Court that the respondent Nos.8 to 12 have raised an unauthorised constructions on LR Plot No.237 corresponding to LR Khatian No.1285 of mouza Gobindapur, District-South 24-Parganas. It is the contention of the petitioner that the Pradhan of Dhosa-Chandaneswar Gram Panchayat, intimated the petitioner under the Right to Information Act that the said respondents had not been granted any sanction by the panchayat authorities.

On the basis of the information received from the gram panchayat, the petitioner filed a representation

requesting the authority to take immediate steps against the unauthorised constructions in terms of Section 23 of the West Bengal Panchayat Act, 1973. As the panchayat authorities did not take any steps, this writ petition has been filed.

The learned Advocate for the respondent Nos.8 to 12 has submitted certain documents which indicate that the respondent Nos.8 to 12 are the beneficiaries under PMAY scheme and as such the provisions of Section 23 of the West Bengal Panchayat Act, 1973 would not be applicable. It is further submitted that no permission would be necessary for any housing project under the poverty alleviation scheme.

With regard to the construction of the respondent No.8, it is submitted that the father of the said respondent had built the house 100 years ago and at the relevant point of time the Panchayat Act and the Building Rules were not applicable.

Having considered the contentions of the parties and the certificates issued by the Pradhan of Dhosa Chandaneswar Gram Panchayat, it appears that the respondent Nos.8 to 12 are the beneficiaries under the PMAY(G) scheme. Thus, the allegations against the said respondents do not survive. However, the said respondents are obliged to construct only in accordance with the model

plan/sketch/drawing that was approved by the authority in terms of the scheme.

With regard to the construction of the respondent No.8, it is specifically contended by the petitioner that such construction is a recent one and is still going on. Without going into the merits of such allegation and without expressing any opinion over the disputed questions of fact, the writ petition is disposed of with liberty to the petitioner to approach the Dhosa Chandaneswar Gram Panchayat by filing a specific representation in respect of the construction of the respondent No.8, as urged before this Court. If such representation is filed, the same shall be disposed of in accordance with law. The only issue to be decided would be whether the existing structure was constructed prior to the promulgation of the West Bengal Panchayat Act, 1973 and the Rules or whether any new construction has been raised without any permission. If it is found that a new construction over and above the existing structure had been raised or was being raised without any permission, steps shall be taken in accordance with law.

Before any decision is taken by the panchayat authorities, an inspection shall be made in presence of the parties. Report of such inspection shall be prepared and handed over to the parties. A hearing shall be given. The

parties shall be entitled to file their written statements and documents in support of their respective contentions. A reasoned order shall be passed and communicated to all.

Needless to mention, the authority concerned shall act and proceed in accordance with law.

The entire exercise shall be completed within a period of three months from the date of receipt of the petitioner's representation.

A copy of the writ petition along with a server copy of this order be served upon the Pradhan, Dhosa Chandaneswar Gram Panchayat.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)