

19.09.2022
Sl. No.46(DL)
srm

W.P.A. No. 20274 of 2021
Sri Prashanta Mondal
Vs.
The State of West Bengal & ors.

Mr. Arijit Majumdar
....for the Petitioner.

Mr. Jaharlal De,
Mr. Shamim ul Bari
...for the State-respondents.

Mr. Amal Kumar Banerjee
...for the Respondent Nos.8 to 14.

Affidavit-of-service is taken on record.

The petitioner alleges that the order dated December 7, 2021 issued by the Pradhan Kundal Gram Panchayat suffers from irregularity and non-application of mind. It is alleged that the order dated December 7, 2021 is in the nature of a communication and not a reasoned order. The order is not a compliance of the direction of this Court passed in WPA No.20996 of 2019 dated January 13, 2021.

It appears that the respondent Nos.8 and 9 approached this Court alleging an illegal construction by the petitioner. The Court had directed the Pradhan of Kundala Gram Panchayat, Birbhum to consider the

representation of the respondent Nos.8 and 9, herein, in accordance with law, after giving an opportunity of hearing to the petitioner and all other necessary parties. The Court had directed that a reasoned decision shall be passed and communicated to all the parties.

The order impugned before this Court appears to be a direction upon the petitioner to remove the construction. However, neither any specifications have been given nor has there been any exercise to assess and detect the nature and extent of unauthorised construction. Even if it was a construction without any plan and the entire construction was required to be demolished, findings to that effect, ought to have been reflected in the order.

The writ petition is allowed. The order impugned dated December 7, 2021 being annexure P/3 to the writ petition is set aside and cancelled. The order impugned is being set aside only on the ground that the same is not a reasoned order. The correctness of the findings has not been gone into. The entire issue shall be decided afresh in accordance with law.

Under such circumstances, the writ petition is disposed of with a direction upon the permission granting authority of Kundala Gram Panchayat to decide the entire issue afresh. *De novo* proceeding shall be initiated. While

doing so, the concerned gram panchayat shall adhere to the following procedures:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of all interested parties, with 48 hours advance notice to the petitioner, all interested parties and also the respondent Nos.8 to 9.
- b) The report of the inspection shall be prepared along with the sketch map, indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also the respondents.
- d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and is continuing, the authorities may take interim measures by stopping such construction.
- e) A hearing shall be given to the petitioner and all other interested parties. 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.

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 provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

The question of title, encroachment, boundary dispute, etc. shall not be decided by the panchayat authorities.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

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.)