

7.2.2022
Court No. 19
Item no.7
sn

WPA 20570 of 2021

Kartick Pakhira
Vs.
The State of West Bengal & ors.

Mr. Shaunak Ghosh
Mr. Sourav Mondal
.....for the petitioner.

Mr. Tahid Khan
Mr. Sirsendu Sinha Roy
..for the respondent no.8

Mr. Wasim Ahmed
Sk. Md. Masud
..for the State

Despite service, none appears on behalf of the respondent no.7. Affidavit of service is taken on record.

The petitioner has alleged unauthorised construction on a land being L.R.Dag No. 1947 pertaining to Mouza Baikanthapur, P.S. Pursurah, District Hooghly, by the respondent no.8.

It is the contention of the petitioner that the respondent no.8 while raising such construction, encroached into a low land which is used for drainage, in the locality. Reliance has been placed on the West Bengal Panchayat(Gram Panchayat Administration) Rules, 2004. It is submitted that Rule 22 specifically provides that permission must not be granted by the gram panchayat for a construction on any area used for drainage facilities

in the locality. Petitioner alleges violation of the Rules. A complaint has been lodged with the panchayat authorities, which has not been disposed of.

Mr. Khan, learned advocate for the respondent no.8 denies the contention of the petitioner and submits that the construction has been made within L.R. Dag no. 1947, upon grant of due sanction/permission dated October 7, 2021. That there has not been any construction on any low land or drains. That the petitioner had initiated a proceeding under Section 144 of the Code of Criminal Procedure and the proceedings have been stayed by the learned Additional Session Judge, 1st Court, Arambag. It is his specific case that L.R. Dag No.1947 was converted to 'Dokan' some time in 2008 by the appropriate authority and as such there was no prohibition under the law to stop the construction which was being raised as per the sanction plan/permission granted by the panchayat authorities and also in consonance with the rules.

Be that as it may, as there are is a complaint before the authority, this Court is of the opinion that the competent authority of the Bhangamora Gram Panchayat must be directed to dispose of the complaint dated June 15, 2021, which is at page 26 being Annexure P/3 to the writ petition.

While disposing of the writ petition, the panchayat authorities shall adhere to the following procedure:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the parties, with 48 hours advance notice to the petitioner and the respondent no.8. If the parties are not available to accept notice, the panchayat shall affix the notice of hearing and inspection at a conspicuous place in their respective premises.
- b) A report of the inspection shall be prepared along with the sketch map indicating the extent and nature of unauthorized construction, if any.
- c) Such report shall be handed over to the petitioner as also the respondent no.8.
- d) A hearing shall be given to the petitioner and the respondent no.8. 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.

- e) 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 counter-claims of the parties and the issues shall be decided independently.

In view of the rising pandemic situation, the entire exercise shall be completed within an extended period of six 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 server copy of this order.

(Shampa Sarkar, J.)