

14.09.2022
Court No. 19
Item no.10
CP

W.P.A. No. 20584 of 2022
Sk. Saiful Haque @ Sk Saiful
Vs.
The State of West Bengal & Ors.

Mr. Ravi Ranjan Kumar
Mr. Saket Sharma

.....for the petitioner.

Mr. Sudipto Panda
Ms. Munmun Tiwary

....for the State.

Affidavit of service is taken on record.

The respondent nos. 7 to 10 are not before the court.

As the Court is not inclined to pass mandatory directions, as prayed for in the writ petition, but is relegating the entire dispute for adjudication by the competent authority under law, the writ petition is taken up in their absence.

The petitioners allege that the respondent nos. 7 to 10, who are his brothers, have started an unauthorized construction on L.R. Plot Nos. 4535, 4544, 4537 and 4536 without obtaining any permission from the authority. The petitioner claims to be a co-sharer. It is submitted that on local enquiry from the Kumirmorah Gram Panchayat, the petitioner came to know that the construction was

not permitted by the authority. It is further submitted that such construction is being raised in violation of an order of injunction, passed in a partition suit by the competent civil court. The suit is pending.

Records reveal that the petitioner has not yet approached the concerned panchayat authorities with his grievances.

Under such circumstances, the writ petition is disposed of granting liberty to the petitioner to file a composite representation before the concerned gram panchayat authorities with the allegation of unauthorized construction. If such representation is made, the same shall be disposed of in accordance with law.

While doing so, the following procedure shall be adopted:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos. 7 to 10. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 7 to 10 and all other interested parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the 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 petitioner and the respondent nos. 7 to 10. 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 Section 23(5) of the West Bengal Panchayat Act. 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 receipt of the application.

The question of title, possession and boundary etc. shall not be decided by the panchayat authorities. The only question to be decided by the panchayat authorities, would be whether the construction has been made without any permission and/or in violation of the building rules and the relevant laws.

The issue with regard to the construction in violation of the injunction order and the question of right, title and interest shall be decided by the appropriate civil court.

A copy of the writ petition along with a server copy of this order be served upon the concerned gram panchayat for necessary compliance 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 server copy of this order.

(Shampa Sarkar, J.)