

23.11.2022
Court No. 19
Item no.388
CP

W.P.A. No. 21350 of 2021

Mr. Atul Chandra Maity

Vs.

The State of West Bengal & Ors.

Mr. Srinjay Sengupta
Mr. Saurav Roy
Mr. Narattam Acharyya
Mr. Ankush Ghosh

.....for the petitioner.

Ms. Sipra Mazumder
Mr. Khairul Alam

....for the State.

Despite service, none appears on behalf of the respondent nos. 8 to 11.

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

The petitioner alleges that the respondent nos. 8 to 11 have raised a construction without taking any permission from the Patashpur Gram Panchayat. The petitioner contends that the construction has gone beyond the area demarcated as per a solenama executed in 1972. It is further contended that the construction was without any permission from the authority and had been raised during the pendency of a civil suit.

It appears that the petitioner approached the Pradhan, Patashpur Gram Panchayat by filing a complaint. The petitioner claims ownership of the land in question and has also stated that a litigation is pending.

However, the issues of title, ownership, possession cannot be gone into either by this court or by the panchayat authorities. The only issue that can be decided by the panchayat authorities is whether any construction had been made in violation of any rule and/or in the absence of any permission/sanction.

Accordingly, the writ petition is disposed of with a liberty to the petitioner to approach the gram panchayat by filing a detailed representation. If such representation is filed, the same shall be disposed of in accordance with law upon granting an opportunity of hearing to the petitioner and the respondent nos. 8 to 11. This court has not entered into the merits of the allegations levelled by the petitioner and the issues shall be decided independently by the permission granting authority. The permission granting authority shall adhere to the following procedure while disposing the representation of the petitioner:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos. 8 to 11. An advance notice of the inspection shall be served upon the petitioner and the

respondent nos. 8 to 11 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 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. 8 to 11. 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 of the West Bengal Panchayat Act.

The court has not gone into the merits of the claims.

The entire exercise shall be completed within a period of four months from the date of receipt of the said representation.

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

A copy of the writ petition along with a server copy of this order be served upon the concerned permission granting authority 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.)