

S/L 105
23.09.2022
Court. No. 19
GB

W.P.A. 20873 of 2022

Najrul Islam
VS
The State of West Bengal & Ors.

Md. G.N. Imrohi.

...for the Petitioner.

*Mr. Naba Kr. Das,
Mr. Subhabrata Das.*

...for the State.

*Mr. Dilip Kumar Samanta,
Mr. Debapriya Samanta.*

...for the Respondent Nos.8 & 9.

The petitioner alleges that the respondent nos.8 and 9 have been raising a new construction on Plot No.1362/1742 of Mouza-Hurshi without any permission from the panchayat authorities. Reliance has been placed on the reply given under the Right to Information Act by the Secretary, Hurshi Gram Panchayat, indicating that no permission had been granted to Jafar Ali Mondal, Sinarul Islam and Md. Ajkar Ali for construction of a building on the plot in question.

Mr. Samanta, learned advocate for the respondent nos.8 and 9 submits that the land was purchased along with the construction, sometime in 1987. That the repair work which has been started, is exempted under Rule 19(1) of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 (hereinafter referred to as the 'said Rules'). The deed of sale, filed by the respondent nos.8 and 9, has been produced in court.

These disputed questions of facts, cannot be ascertained by this Court. This Court deems it fit that the

panchayat authorities must dispose of the representation of the petitioner dated August 30, 2022 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.8 and 9. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 8 and 9 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 had been 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. The question of right, title and possession shall not be decided by the panchayat authorities.
- e) A hearing shall be given to the petitioner and the respondent nos. 8 and 9. 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. The contention of Mr. Samanta that the construction of the shop was exempted under Rule 19(1) of the said Rules shall also be taken into consideration and the further contention that the construction was already in existence since long, even before the panchayat laws had come into force, shall also be taken into consideration.

- 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, 1973.

The court has not gone into the merits of the claims of the petitioner and the issues involved shall be decided independently.

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