

S/L 106
23.09.2022
Court. No. 19
GB

W.P.A. 20908 of 2022

Debabrata Gayen & Anr.
VS
The State of West Bengal & Ors.

Mr. Ajoy Debnath,
Mr. Asit Kr. De.

...for the Petitioners.

Mr. Jahar Dutta,
Mr. Bipin Ghosh.

...for the State.

Mr. Ziaul Haque.

...for the Respondent No7.

Affidavit-of-service filed in Court today, be kept with the record.

The petitioners allege that the respondent no.7 has made a construction on Plot Nos.190 and 192 of Mouza-Hemantachak, which has been classified as 'Dhosa'. It is further submitted that the said construction is without any permission and without any conversion. It is also alleged that the construction has been made on an undivided plot.

The learned advocate for the respondent no.7 submits that conversion was obtained and permission was sought for, but not granted. It is submitted that the construction was started as no communication was received from the panchayat authorities. Such non-communication amounts to deemed sanction. These are disputed questions of facts, which cannot be adjudicated by the Court. This Court directs the permission granting authority, that is, the Khejuri Gram Panchayat to dispose of the representation of the petitioners dated August 3, 2022, in accordance with law. If it appears that the permission granting authority would be the Zilla

Parishad or any other authority, then the matter shall be referred to the said authority, by the gram panchayat.

While disposing of the matter, the following procedure shall be adopted by the permission granting authority.

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent no.7. An advance notice of the inspection shall be served upon the petitioners and the respondent no.7 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 petitioners and the respondent no.7. 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 question of deemed sanction must also 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 accordance with law.

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