

16.09.2022
Sl. No.4(DL)
srm

W.P.A. No. 20930 of 2022
Nirapada Maity
Vs.
The State of West Bengal & ors.

Mr. Soumak Bera
....for the Petitioner.

Mr. Pantu Deb Ray,
Mr. Anand Farmania
...for the State-respondents.

Mr. Dilip Kumar Samanta,
Mr. Debapriya Samanta
...for the Respondent No.8.

The petitioner prays for a direction upon the Sub-Divisional Officer, Ghatal, Paschim Medinipur to complete the proceedings by demolishing the alleged unauthorized structure raised by the respondent No.8. According to the petitioner, the panchayat authorities made a spot enquiry, granted an opportunity of hearing to the parties and thereafter came to the conclusion that the respondent No.8 had raised an unauthorized construction. The matter was sent to the Sub-Divisional Officer as per the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973. It is alleged that the Sub-Divisional Officer, did not take any steps pursuant to the reference made by the gram panchayat authorities.

The learned Advocate for the petitioner submits that once the panchayat authorities had come to a finding upon hearing the parties and upon making the spot enquiry, the Sub-Divisional Officer must now discharge his statutory functions. Reference is made to the order passed by the Pradhan, from which it appears that the brother of the respondent No.8 had appeared before the authority, but did not produce any relevant documents. The respondent No.8 was admittedly absent.

It is submitted by the respondent No.8 that his brother was not authorized to appear on his behalf. The respondent No.8 is the person responsible for the alleged construction. That the respondent No.8 had all the relevant documents in support of such construction. He also submits that by invoking the provisions of a deemed sanction as per Rule 30 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004, the construction of the first floor had been made.

The order of the panchayat authorities reflects that there had been deviation in the construction of the ground floor and an unauthorized construction of the first floor. These disputed questions of facts cannot be gone into by the Court. It is also a fact that at the time of spot enquiry, the respondent No.8 was not available.

Under such circumstances, in consonance with the principles of natural justice, this Court deems it fit to hold that the order of the panchayat authorities dated June 29, 2022 be treated as a *prima facie* finding of the alleged unauthorised construction. However, in order to give one last opportunity to the respondent No.8 to be present before the authorities concerned at the time of determination of the issue, the writ petition is disposed of with the following orders:-

- a) The authorities of Kheput Dakshinbarh Gram Panchayat No.7 shall cause an inspection of the premises in question within four weeks from the date of communication of this order. Such inspection shall be held in the presence of all interested parties, with 48 hours advance notice to the petitioner and all interested parties and also the respondent No.8.
- b) A report of such inspection shall be prepared along with the sketch map, indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also to the respondent No.8.
- d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction

was without permission and is continuing, the authorities may take interim measures by stopping such construction.

- e) A hearing shall be given to the petitioner, the respondent No.8 and all other interested parties. 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.
- 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 the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

It is made clear that if at any stage the respondent No.8 or his learned Advocate, carrying his *vakalatnama*, does not cooperate with the panchayat authorities or the Sub-Divisional Officer or prays for unnecessary adjournments or is absent on the dates of inspection and hearing, the panchayat authorities and the Sub-Divisional Officer shall act and proceed in accordance with law.

The questions of title, possession, encroachment, etc. shall not be decided by the panchayat authorities or the Sub-Divisional Officer.

The entire exercise shall be completed within a period of four 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 basis of the server copy of this order.

(Shampa Sarkar, J.)