

21.09.2022
Sl. No.13(DL)
srm

W.P.A. No. 21480 of 2021

Eakup Saha

Vs.

The State of West Bengal & Ors.

Ms. Reshmi Ghosh,
Mr. Soumya Sankar Chini

....for the Petitioner.

Mr. Malay Singh,
Mrs. Rupsha Chakraborty

...for the State-respondents.

Affidavit-of-service is taken on record. Despite service, none appears on behalf of any of the respondent Nos.2, 3 and 6.

As this Court is not passing any mandatory directions, as prayed for in the writ petition, but is relegating the matter to the appropriate permission granting authority under the law for consideration, the writ petition is taken up in their absence.

The petitioner has alleged unauthorised construction by the respondent No.6. It is submitted that during the pendency of the civil suit and in the teeth of an ad interim order of *status quo*, the construction has been raised.

With regard to the allegation of violation of the order of injunction, the petitioner's remedy would be before the learned civil court. It also appears that the police authorities had been directed by this Court to implement the order of *status quo*.

However, the question of unauthorised construction will have to be determined by the panchayat authorities. Steps which are required to be taken under the law upon detection of an unauthorised construction also have to be taken by the competent permission granting authority. In this case, it appears that there is an order of *status quo*, but the status of the land and whether there was an existing structure belonging to the respondent No.6, when the order was passed, is not available.

The petitioner has annexed photographs to show the extent and nature of construction. However, unless the learned civil court determines that the construction was in violation of the order of *status quo*, it would not be proper for the Writ Court to direct demolition of the said structures, even if the panchayat authorities or the permission granting authority arrives at a specific finding that the structure was unauthorised. Although the power of demolition rests with the permission granting authority, yet the order of *status quo* stands in the way.

However, the petitioner is at liberty to approach before the panchayat authorities for determination as to whether the construction was permitted at all by the permission granting authority. If such representation is filed by the petitioner, the same shall be disposed of in accordance with law by the permission granting authority by adopting the following procedure:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of all interested parties, with 48 hours advance notice to the petitioner and all interested parties, as also the respondent No.6.
- b) The report of the 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 the respondent No.6.
- 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 and all other interested parties and the respondent No.6.

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.

The entire exercise shall be completed within a period of three months from the date of receipt of the petitioner's representation.

On the basis of further orders of the civil court, the panchayat authorities shall act and proceed in accordance with law in terms of the provisions of the West Bengal Panchayat Act, 1973.

The question of title, encroachment, boundary dispute, etc. shall not be decided by the panchayat authorities.

The petitioner shall be at liberty to approach the learned civil court with the reasoned order and may seek variation or clarification of the order of *status quo*. The remedy of the petitioner before the learned civil court for the alleged violation of the order of *status quo*, is also kept open.

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.)