

S/L 14
21.09.2022
Court. No. 19
GB

W.P.A. 21502 of 2022

Md. Nizamul Haque & Anr.
VS
The State of West Bengal & Ors.

*Md. Mokaram Hossain,
Sk. Saifuddin,
Mr. Saumen Gayen,
Mr. Sandipan Maity.*

...for the Petitioners.

*Mr. Raja Saha,
Ms. Piyali Sengupta.*

...for the State.

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

Despite service, none appears on behalf of the respondent nos.7 and 8.

As this Court is not inclined to pass any mandatory direction as prayed for by the writ petitioners, but is relegating the entire issue to be determined by the appropriate authority, the writ petition is taken up and disposed of in the absence of the non-appearing respondents.

The petitioners allege that the respondent nos.7 and 8 have been raising a construction on L.R. Plot No.2957 of Mouza-Popara in violation of the rules. According to the petitioners, the mandatory side spaces as required by Rules 23 and 24 of the West Bengal (Gram Panchayat Administration) Rules, 2004, have not been kept vacant.

Specific allegations in this regard have been made in a representation dated September 8, 2022, being Annexure-P/3 at Page-20 of the writ petition.

The writ petition is disposed of with a direction upon the permission granting authority/Sagardighi Gram panchayat to dispose of the representation of the petitioner 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 petitioners and the respondent nos.7 and 8. An advance notice of the inspection shall be served upon the petitioners and the respondent nos.7 and 8 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 nos.7 and 8. 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(5) of the West Bengal Panchayat Act, 1973.

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 12 weeks 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.)