

S/L 15
14.11.2022
Court. No. 19
GB

W.P.A. 21603 of 2022

Nisha Agarwal
VS
The State of West Bengal & Ors.

*Mr. Chayan Gupta,
Mr. Anujit Mookherji.*

...for the Petitioner.

*Mr. Raja Saha,
Mr. S.P. Lahiri.*

...for the State.

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

Despite service, none appears on behalf of the respondent no.5.

This Court is not inclined to pass any mandatory directions, but deems it fit to remit the matter to the permission granting authority for a determination as to whether the alleged construction of the respondent no.5 on a panchayat road allegedly without any sanction and/or without following the building rules are correct or not.

The petitioner alleges that the unauthorized construction of the respondent no.5 has encroached into the panchayat land and such construction has been made in a way that the mandatory open spaces required by law to be kept vacant, have not been maintained. The petitioner has approached the panchayat authorities by a detailed representation, which is Annexure-P/2 at Page 17 of the writ petition.

The writ petition is disposed of with a direction upon the Hariharpur Gram Panchayat to dispose of the complaint of the petitioner in accordance with law and 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 no.5. An advance notice of the inspection shall be served upon the petitioner and the respondent no.5 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. If at the time of inspection it is found that such construction is unauthorized, that is, without permission and/or without any adherence to building rules, steps shall be taken in terms of Section 23 of the West Bengal Panchayat Act, 1973 for demolition. All steps shall be taken to remove the encroachment from panchayat land.
- 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.

e) A hearing shall be given to the petitioner and the respondent no.5. 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 court has not gone into the merits of the claims of the petitioner and the issues involved shall be decided independently. The issue of title, boundary dispute etc. between the private parties shall be gone into by the panchayat authorities.

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.)