

09.11.2022
Court No. 19
Item no.16
CP

WPA No. 21920 of 2022

Sri Madhai Mondal @ Madhab Chandra Mondal
Vs.
The State of West Bengal & Ors.

Mr. Kamakshya Prasad Mukhopadhyay

... for the petitioner.

Mr. Syed Nasim Aejaaz
Mr. Syed Md. Ali

... for the respondent No. 4.

Mr. Manas Kundu
Mr. Abdus Salam

...for the State.

Despite service, none appears on behalf of the
respondent nos. 6 & 7.

As the Court is not inclined to pass mandatory
directions against the said respondents, but is
relegating the entire dispute for adjudication by the
competent authority under law, the writ petition is
taken up in their absence.

On an earlier occasion the petitioner had
approached the panchayat authorities for necessary
action in respect of an alleged encroachment and
construction by the respondent nos. 6 & 7. Such
construction was allegedly raised on Dag Nos. 1538
and 1498 of Mouza – Dhara. As the said
representation was not disposed of, the petitioner
approached this court by filing WPA No. 22207 of

2019. A Coordinate Bench disposed of the writ petition directing the Pradhan of Jagulgachi Gram Panchayat to dispose of the representation, strictly in accordance with law upon granting an opportunity of hearing to all the parties.

Accordingly, the Pradhan of Jagulgachi Gram Panchayat called a hearing. The respondent nos. 6 & 7 appeared before the court and submitted that they were in possession of the said plots of land and the construction thereon was more than 20 years old. The specific allegation of the petitioner was with regard to encroachment on his land. The petitioner claimed right, title and interest in respect of the plots in question. The petitioner left the hearing without producing any documents in his favour and without making any submission in support of his contentions. Accordingly the said pradhan refused to pass any directions on the basis of the representation of the petitioner.

The order of the pradhan dated June 23, 2022 is under challenge in this writ petition.

The petitioner submits that the finding of the pradhan that the respondent nos. 6 & 7 did not forcefully enter into the land of the petitioner, could not be sustained in law as such finding was not based on any inspection.

Learned advocate for the pradhan submits that the issue with regard to title cannot be gone into by the pradhan. The pradhan passed the order on the basis of the records as there was a direction of this court to dispose of the representation of the petitioner.

This court finds that the pradhan did not dispose of the representation in the light of the direction of this court. The question of title, encroachment etc. could not have been decided by the pradhan. All that the pradhan was required to decide was whether the constructions standing on the said plots of land were in accordance with law.

Accordingly, the writ petition is disposed of with liberty to the petitioner to file a fresh complaint before the panchayat authorities with regard to the alleged construction. Specific statements as to what according to the petitioner was unauthorized in respect of the said construction and why the same was contrary to the provisions of the West Bengal Panchayat Act, 1973 according to the petitioner, should be mentioned. Vague and omnibus allegations will not be entertained.

If such representation is filed, the same shall be disposed of in accordance with law. It is the specific contention of the petitioner that the construction is a recent one and is still going on

without any sanction. The respondents had submitted before the authority that the construction was more than 20 years old.

While disposing of the representation, if made, the following procedure shall be adopted by the gram panchayat:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos. 6 & 7. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 6 & 7 and also on 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 was 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, and photographs indicating the extent and nature of unauthorized construction, if any. The approximate age of the building and

the nature of the construction shall be specified in the report.

- d) Such report shall be handed over to the parties.
- e) A hearing shall be given to the petitioner and the respondent nos. 6 & 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 issue whether at the relevant point of time when the construction had been made, the panchayat laws were applicable or not, must also be looked into.
- 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 of the West Bengal Panchayat Act.

The court has not gone into the merits of the claims of the petitioner.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

The question of title, possession and boundary etc. shall not be decided by the panchayat authorities. The only question to be decided by the panchayat authorities, would be whether the construction has been made without any permission and/or in violation of the building rules and the relevant laws.

A copy of the writ petition along with a server copy of this order be served upon the concerned gram panchayat for necessary compliance of this order.

It is made clear that if the petitioner approaches the civil court for necessary declaration of his right, title and interest and for permanent injunction against the respondent nos. 6 & 7, the finding of the panchayat authorities in the impugned order dated June 23, 2022 shall not be relevant. The issues shall be decided independently on evidence, by the learned civil court.

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.)