

31.10.2022
Court No. 19
Item no.23
CP

W.P.A. No. 22086 of 2022
Giasuddin Baidya
Vs.
The State of West Bengal & Ors.

Mr. Omar Faruk Gazi

.....for the petitioner.

Mr. Samim Ahammed
Mr. Arka Maiti
Ms. Ambiya Khatun

....for the respondent nos. 8 and 9.

The petitioner alleges that the respondent nos. 8 and 9 had raised an unauthorized construction on Dag No. 286, Khatian Nos. 35, 820, 843, 844, 845 and 848, J.L. No. 36, pertaining to Mouza – Chaimalpur of Village – Asharia Narayanpur. The petitioner alleges that the nature of the land is ‘Bilan’ and the construction has been made without any permission from the panchayat authorities.

Mr. Ahmmed, learned advocate appearing on behalf of the respondent nos. 8 and 9, submits that a small house had been constructed by his clients much before the Building Rules had come into force. As such, the allegation of violation of the building rules did not arise.

Learned advocate for the petitioner submits that the said construction is recent. When the petitioner made a complaint with regard to such construction, a civil suit was filed by the respondent nos. 8 and 9. An order of injunction was passed, restraining the petitioner from disturbing the peaceful possession of the respondent nos. 8 and 9.

Mr. Ahmmed relies heavily on such order of injunction and submits that the petitioner does not have any title to the property and by virtue of the order of injunction the right of the respondent nos. 8 and 9 in respect of the said land has been temporarily protected.

The question of right, title and interest of the parties with respect to the said land, is not gone into by this court. The only plea of the petitioner which can be entertained is the plea of unauthorized construction, i.e., construction on a land classified as 'Bilan', for which the petitioner allegedly did not obtain any permission.

Accordingly, the writ petition is disposed of with a direction upon the concerned authorities of the Amlani Gram Panchayat to dispose of the representation of the petitioner dated August 23, 2022, being Annexure P-9 at page 68 of the writ petition, 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 petitioner and the respondent nos. 8 and 9. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 8 and 9 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 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, 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 nos. 8 and 9. 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 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.

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.

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.)