

31.10.2022
Court No. 19
Item no.36
CP

W.P.A. No. 22560 of 2022

Aynal Ali Molla

Vs.

The State of West Bengal & Ors.

Mr. Rafikul Islam Sardar

.....for the petitioner.

Mr. Susanta Pal

Mr. Ananda Dulal Sarkar

...for the State.

Mr. Sanjib Das

....for the respondent nos. 8 to 11.

The petitioner alleges that the respondent nos. 8 to 11 had raised a construction on L.R. Dag No. 2575 without any permission. The first allegation is that the said construction could not have been made on a land recorded as 'Suna', especially when the petitioner's father was the recorded bargadar. The next allegation is that such construction was without any permission. Reference has been made to a letter issued by the concerned pradhan indicating that no permission for such construction had been granted.

The police authorities have filed a report from which it appears that there is a long standing civil dispute between the parties with regard to the land in question. Reliance has been placed on a police

report filed in the proceedings under Section 144(2) of the Cr.P.C. which indicates that the police authorities had also mentioned before the learned Executive Magistrate that the construction had been going on.

Learned advocate for the respondent nos. 8 to 11 have filed certain documents which indicate that there was some construction earlier on the land in question and that sanction had been granted to the said respondents for such construction. It is further submitted that the issue with regard to 'barga' as claimed by the petitioner, is pending before the appropriate authority. The claims of the petitioner are baseless according to the learned Advocate for the said respondents.

Neither this court nor the panchayat authorities can decide the issue whether the petitioner was the 'bargadar' upon demise of his father.

The panchayat authorities are empowered under the law to decide the issue of unauthorized construction, i.e., whether the construction had been made without any permission/plan or in deviation of the plan and/or permission and also whether such construction has been made on a land which was not a homestead land.

As there are disputed questions of facts, this writ court cannot adjudicate the same. The authority empowered by law to decide such issues must take steps on the basis of the complaint raised by the petitioner.

Accordingly, the writ petition is disposed of with a direction upon the concerned authorities of the Makalpur Gram Panchayat to dispose of the representation of the petitioner dated August 30, 2022, being Annexure P-5 at page 19 of the writ petition, in accordance with law. If it appears that the permission granting authority was either the Zilla Parishad or the panchayat samiti then the matter will be referred to the concerned appropriate authority by the concerned gram panchayat.

The following procedure shall be adopted by the permission granting authority as the case may be while disposing of the representation:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos. 8 to 11. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 8 to 11 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 to 11. 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 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.)