

M/L 24
19.12.2022
Court. No. 19
GB

W.P.A. 22708 of 2022

Smritikona Sarkar
VS
The State of West Bengal & Ors.

*Mr. Golam Mastafa,
Mr. T.S. Samanta,
Mr. S. Sardar,
Mr. Arsad Hossain.*

...for the Petitioner.

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

Despite service, none appears on behalf of the panchayat authorities. The respondent no.7 whose unauthorized construction is the subject matter of dispute in this writ petition, has refused service. The postal article with the endorsement 'Refused' has been filed in Court. The same is taken on record. Refusal is good service and hence, the matter is taken up in the absence of the said respondents.

The petitioner alleges that the respondent no.7 has been raising an unauthorized construction contrary to the building rules and without leaving adequate side spaces. Reliance has also been placed on some communications between the panchayat authorities and the Officer-in-Charge, Karimpur Police Station.

It appears that the panchayat authorities had sought for police help in order to stop the unauthorized construction.

The petitioner approached the Pradhan of Karimpur-I gram panchayat by filing a demand of justice through his learned advocate. It is alleged that the unauthorized construction has not yet been demolished.

Under such circumstances, the writ petition is disposed of with a direction upon the Karimpur-I gram panchayat to treat the demand of justice dated July 12, 2022 as a representation and dispose of the same 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 no.7. An advance notice of the inspection shall be served upon the petitioner and the respondent no.7 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 a 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, possession and boundary

dispute shall not be decided by the panchayat authorities.

- e) A hearing shall be given to the petitioner and the respondent no.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.
- 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 petitioner and the issues involved shall be decided independently, upon hearing the parties.

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.)