

16.11.2022  
Court No. 19  
Item No.20  
CP

WPA No. 23662 of 2022

Swadhin Mondal  
Vs.  
The State of West Bengal & Ors.

Mr. Baidurya Ghosal  
Ms. Avipsha Dutta Roy  
...for the petitioner.

Ms. Sonal Sinha  
Mr. Shourya Vir Das  
...for the State.

Mr. Partha Pratim Roy  
Mr. Sarbananda Sanyal  
Ms. Poulami Chakraborty  
...for the respondent nos. 6 & 7.

Affidavit of service is taken on record.

The petitioner alleges that the respondent nos. 6 & 7 had made some construction alongside a panchayat road, right in front of his premises. Such construction has obstructed the petitioner's free ingress and egress.

Learned advocate for the respondent nos. 6 & 7 submits that the construction is on their own land and had been made in accordance with the plan approved by the concerned gram panchayat.

It is further submitted that a civil suit is pending and, as such, the question of title of the land over which such construction has been made, cannot be decided by the civil court. The allegation of

construction by the side of the panchayat road has been denied by the said respondent.

This court is not competent to decide the question of title of the land on which the construction has been made. The panchayat authorities are also not equipped to decide the same.

It is the specific case of the respondent nos. 6 & 7 that they have constructed on their own lands.

However, the only issue that can be decided is whether the construction has been made in accordance with the permission from the concerned authority and by maintaining the building rules.

Under such circumstances, the writ petition is disposed of with a direction upon the Bahadurpur Gram Panchayat to dispose of the representation of the petitioner dated September 20, 2022, in accordance with law. While doing so 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. 6 & 7. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 6 & 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 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. 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.
- 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, 1973.

This 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, unless it is found on inspection that the construction falls within the land either owned or maintained by the panchayat. The questions to be decided by the panchayat authorities would be whether the construction had been made without any permission and/or in violation of the building rules and the relevant applicable 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.)**