

M/L 32
13.12.2022
Court. No. 19
GB

W.P.A. 24680 of 2022

Smt. Mahuya Ghosh & Ors.
VS
The State of West Bengal & Ors.

Mr. Sudip Das.

...for the Petitioners.

*Mrs. Anwari Quraishi,
Mr. Zainab Tahir.*

...for the State.

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

Despite service, none appears on behalf of the respondent no.9. As this Court is not inclined to pass any mandatory direction as prayed for by the writ petitioners but is relegating the entire issue to be determined by the concerned authority, the matter is taken up and disposed of in his absence.

It is alleged that the respondent no.9 started raising a construction on L.R. Dag No.55 pertaining to L.R. Khatian Nos.68, 582 and 583 of Mouza-Porabazar, without any permission from the Madra Gram Panchayat.

The petitioners claim ownership in respect of the plot on which such construction has allegedly been made.

The issue with regard to title and encroachment cannot be decided by this Court. The panchayat authority also cannot be directed to take a decision in respect of such allegations.

The only question to be determined would be, whether the construction of the respondent no.9 was with permission from the authority and was also in compliance with the building rules and the law.

As there is an allegation that the alleged construction is being made without any permission from the Madra Gram Panchayat, this Court is of the view that the justice would be sub-served if the Madra Gram Panchayat is directed to dispose of the demand of justice dated October 7, 2022 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 petitioners and the respondent no.9. An advance notice of the inspection shall be served upon the petitioners and the respondent no.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 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 and possession shall not be decided by the panchayat authorities.
- e) A hearing shall be given to the petitioners and the respondent no.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.
- 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.)