

14.12.2022
Sl. No.43(ML)
srm

W.P.A. No. 25142 of 2022

Sujata Sanpui

Vs.

The State of West Bengal & Ors.

Md. Mokaram Hossain,
Mr. Saumen Gayen

....for the Petitioner.

Mr. Arun Kumar Ray,
Mr. Arun Kumar Saha

.....for the State-respondents.

Mr. Atarup Banerjee,
Mr. Bapin Baidya

...for the Respondent Nos.9-11.

Affidavit-of-service is taken on record.

The petitioner alleges that the respondent Nos.9 to 11 had raised constructions on LR Plot Nos.238 and 288 pertaining to LR Khatian No.1380 of mouza Gobindapur, District-South 24-Parganas without any sanction. It is further submitted that the plot No.288 had not been converted to '*bastu*'. Record of rights has been relied upon in support of the contention that the land continues to be recorded as '*sali*'.

The learned Advocate for the respondent Nos.9 to 11 denies the allegations and submits that the construction of a hut would not require any permission from the

panchayat authorities. Thus, the alleged construction, according to the learned Advocate, was exempted from applicability of Section 23 of the West Bengal Panchayat Act, 1973.

Having heard the learned Advocates for the respective parties, this Court is of the view that such disputed questions of fact cannot be decided by the writ court. Without any inspection of the nature and character of the construction, the applicability of the provision of Section 23 of the West Bengal Panchayat Act, 1973 cannot be ascertained. Whether any construction has been made without conversion shall also be decided.

The writ petition is disposed of granting liberty to the petitioner to approach Dhosa-Chandaneswar Gram Panchayat, District-South 24-Parganas by filing a composite representation specifically indicated her grievance. If such representation is filed, the same shall be disposed of by the Dhosa-Chandaneswar Gram Panchayat in accordance with law. While doing so, the gram panchayat shall adhere to the following procedure:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent Nos.9 to 11, with 48

hours advance notice to the petitioner and the respondent Nos.9 to 11.

- b) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also the respondent Nos.9 to 11.
- d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and is continuing, the authorities may take interim measures by stopping such construction.
- e) A hearing shall be given to all the parties. 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.
- 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 accordance with law.
- g) If it appears that the nature of construction did not require sanction, but the land continued to be 'Sali',

the panchayat authorities will refer the matter to the competent authority for necessary action as per law.

The entire exercise shall be completed within a period of four months from the date of receipt of the petitioner's representation.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)