

S/L 16
12.12.2022
Court. No. 19
GB

W.P.A. 26273 of 2022

Smt. Chabi Rani Shau
VS
The State of West Bengal & Ors.

Mr. Biswajit Sau.

...for the Petitioner.

Mr. Himadri Sikher Chakraborty,
Mr. K.M. Hossain.

...for the State.

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

The petitioner relies on an order passed by the Pradhan, Gangasagar Gram Panchayat dated February 21, 2022, directing the respondent no.4 to demolish the unauthorized construction.

It appears that the said order was passed pursuant to a direction of this Court on August 22, 2016 in W.P. No.21462(W) of 2014. Although the panchayat authorities had come to a conclusion that the construction was made illegally and on a portion of land owned by the petitioner, this Court is of the view that such observation shall not amount to a decision on the title of the petitioner.

However, when there is a finding of unauthorized construction, such finding must be reached to its logical conclusion. The order of the Pradhan indicates that the respondent no.4 did not attend the hearing.

Thus, this Court is of the view that the finding of the panchayat authorities shall be treated as a preliminary

finding based on an inspection, but a further opportunity must be given to the respondent no.4 before such order is implemented in terms of the Section 23(5) of the West Bengal Panchayat Act, 1973.

Under such circumstances, the writ petition is disposed of with a direction upon the Gangasagar Gram Panchayat to dispose of the complaint of the petitioner in terms of the earlier order already passed. 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.4. An advance notice of the inspection shall be served upon the petitioner and the respondent no.4 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 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 questions of right, title and possession shall not be decided by the panchayat authorities.

- e) A hearing shall be given to the petitioner and the respondent no.4. 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 two 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.)