

20.12.2022
Sl. No.3(DL)
srm

W.P.A. No. 27096 of 2022
Anadi Mohan Naskar
Vs.
The State of West Bengal & ors.

Mr. Lakshminath Bhattacharya
.....for the Petitioner.

Mr. Goutam Sapoi,
Mr. Amit Bikram Mahata
.....for the Respondent Nos.10 & 11.

Affidavit-of-service is taken on record. Despite service, none appears on behalf of the State-respondents and the panchayat authorities.

As this Court is not inclined to pass mandatory directions as prayed for, but is relegating the matter before the competent authority, the writ petition is taken up in their absence.

The petitioner alleges that the respondent Nos.10 and 11 have raised an unauthorised construction over Dag No.921 of mouza Nalgora, District-South 24-Parganas without obtaining any conversion of the land from '*sali*' to '*bastu*' and also without any permission from the panchayat authorities.

The petitioner refers to a representation filed before the Pradhan of Nalgora Gram Panchayat, District-South 24-Parganas with such allegations. As no steps were taken by the panchayat authorities, this writ petition has been filed.

The learned Advocate for the respondent Nos.10 and 11 submits that the law provides for *post facto* regularization of conversion and as such the allegation of change of user is not sustainable in law.

As there are disputed questions of facts which cannot be adjudicated by this Court, the matter must be remitted to the permission granting authority for necessary action in terms of Section 23 of the West Bengal Panchayat Act, 1973, read with Rule 26 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004.

Without going into the merits of the allegations made by the petitioner, the writ petition is disposed of with a direction upon the Nalgora Gram Panchayat, District-South 24-Parganas, to dispose of the representation/complaint dated October 13, 2022 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.10 and 11, with 48 hours advance notice to the petitioner and the respondent Nos.10 and 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.10 and 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 terms of the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

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, encroachment, etc. shall not be gone into.

A copy of the writ petition along with a server copy of this order be served upon the Pradhan, Nalgora Gram Panchayat.

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.)