

S/L 13
30.03.2022
Court. No. 19
GB

WPA 8747 of 2020

Kutubuddin Mallick & Ors.
VS

The Principal Secretary, Panchayat Department,
Government of West Bengal & Ors.

*Mr. S.P. Lahiri,
Sk. Nizamuddin.*

...for the Petitioners.

*Mr. Manas Kundu,
Mr. Sudip Sarkar.*

...for the State.

*Mr. Tapas Kumar Dey,
Mr. A.K. Dutta.*

...for the Respondent Nos.12 & 13.

Mr. Partha Roy.

...for the Respondent No.9.

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

The Pradhan of Sankarhati-II Gram Panchayat is
represented.

Mr. Tanmoy Karmakar, Sub-Inspector of Police,
Jagatballavpur Police Station is before the Court. His effort is
appreciated.

The petitioners rely upon an order passed by the Block
Development Officer, Jagatballavpur Development Block
dated October 22, 2019 and pray that despite there being
directions upon the Pradhan, Sankarhati-II Gram Panchayat
to stop the construction going on at Dag No.1238, J.L.
No.016, Mouza-Bamunpara, the panchayat authorities have
not taken steps in this regard.

According to the petitioners, the respondent nos.10 to
13 had made certain unauthorized constructions on the

alleged plot, by violating the law. Accordingly, a representation was made before the concerned Block Development Officer. The Block Development Officer did not take any steps. A writ petition was filed before this Court, which was registered as W.P. No.12314 (W) of 2019. A coordinate Bench of this Court had directed the Block Development Officer to dispose of the representation of the petitioner. Accordingly, the Block Development Officer, Jagatballavpur Development Block passed an order upon being *prima facie* satisfied with the complaint of the petitioners directed that the Pradhan, Sankarhati-II Gram Panchayat must take steps to stop the unauthorized construction.

Mr. Roy, learned advocate appearing on behalf of the Pradhan submits that pursuant to the intimation of the Block Development Officer, the authorities of the gram panchayat have ensured that no further construction takes place in the premises in question. A stop work notice is handed over to the Court. The said notice is kept on record.

Mr. Dey, learned advocate appearing on behalf of the respondent nos.10 to 13 submits that upon receipt of the stop work notice, no construction has taken place. Documents have been filed by Mr. Dey to assert that the area over which the construction was going on, belongs to the said respondents, by virtue of an oral partition. Record of rights have also been produced. He submits that the oral partition has been acted upon. He next submits that a sanction was granted by the panchayat authorities, way back in 2019 and such construction was raised in accordance with law.

Whether there has been an oral partition between the parties and whether the same has been acted upon, are not to be decided either by the writ Court or by the panchayat authorities. The only issue involved in this proceeding is whether the alleged construction of the respondent nos.10 to 13 is either in deviation of the permission or in violation of the Rules. The other issues shall not be gone into by the panchayat authorities. The panchayat authorities shall initiate a proceeding in accordance with law and reach the same to its logical conclusion.

While disposing of the complaint of unauthorized constructions, the panchayat authorities shall act and proceed in the following manner:-

a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos.10 to 13, within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondent nos.10 to 13. If the parties are not available to accept notice, the authorities shall affix the notices of hearing and inspection at conspicuous places in their respective premises.

b) 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.10 to 13. 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, shall 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 the statute.

The court has not gone into the merits of the claims and counter-claims of the parties and the issues involved shall be decided independently. With regard to the other issues raised, the petitioners are entitled to approach the appropriate forum.

The entire exercise shall be completed within a period of two months from the 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 learned advocate's communication.

(Shampa Sarkar, J.)