

Item No.11
30.01.2023
Court. No. 19
GB

W.P.A. 121 of 2023

Kali Krishna Sardar
VS
The State of West Bengal & Ors.

Mr. Sudarshan Ghosh

...for the Petitioner.

*Mr. Ziaul Islam,
Syed Mosihar Rahman*

...for the State.

*Mr. Apurba Krishna Das,
Mr. Bapin Baidya*

...for the Respondent No.6.

The petitioner alleges that the respondent no.6 had raised a construction on Dag No.5903/7165 corresponding to Khatian No.4918 of Mouza-Mahahouri, without permission and without conversion of the said land. The petitioner also claims title over the said land.

The learned advocate for the respondent no.6 denies the title of the petitioner and submits that such issue cannot be decided either by the writ Court or by the panchayat authorities. He further submits that the existing shop rooms have been repaired and they had been constructed on P.W.D. land, long time ago. The photograph filed by the respondent no.6 is taken on record.

Mr. Islam, learned advocate appearing on behalf of the State respondents has filed a letter written by the Pradhan, Mayahouri gram panchayat dated January 28, 2023 addressed to the Block Development Officer, Jaynagar-I Development Block. As per the panchayat authorities, no permission for construction of shop rooms had been given to

the respondent no.6. The report filed by the Pradhan is taken on record.

Having considered the rival contention of the parties, this Court is of the opinion that the gram panchayat has been authorized to take appropriate steps in accordance with law, in case any construction is made without permission. The gram panchayat also has the authority under Section 25(2) of the West Bengal Panchayat Act, 1973 to remove, obstructions from public streets or the lands within the control of the panchayat.

However if upon inspection, the panchayat authorities find that such construction had been made on a public road or on any land either within the control of the PWD or any other department of the State Government, in that event, the panchayat authorities shall refer the matter to the concerned department for necessary action in accordance with law.

If it is found that the construction is on a private land and without any permission, the gram panchayat shall act and proceed accordingly.

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.6. An advance notice of inspection shall be served upon the petitioner, the respondent no.6 and on 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 the construction was without permission and was continuing, the authorities may take interim measures, by stopping such construction.
- c) A 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 title, possession and boundary dispute etc. shall not be decided by the panchayat authorities. The questions to be decided by the panchayat authorities would be whether the construction has been made without any conversion or without any permission or in violation of the building rules.
- e) A hearing shall be given to the petitioner and the respondent no.6. 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.

The entire exercise shall be completed within a period of four 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 server copy of this order.

(Shampa Sarkar, J.)