

S/L 15
11.01.2023
Court. No. 19
GB

W.P.A. 199 of 2023

Rajesh Mondal
VS
The State of West Bengal & Ors.

*Mr. Bhagabat Chowdhury,
Sk. Toslim Ali,
Ms. Saba Parween*

...for the Petitioner.

*Mr. Malay Singh,
Mr. Tapas Ballav*

...for the State.

*Mr. Sanjit Seth,
Mr. Saptarshi Basu,
Mir Md. Hassanuzzaman,
Ms. Basanti Saren*

...for the Respondent Nos.6, 9 to 13.

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

The petitioner alleges that the respondent no.6 to 13 have raised an unauthorized construction on L.R. Plot No.789 of Mouza-Mainan without any permission and without conversion.

There is already a partition suit pending between the parties. The only issue to be determined is whether the alleged construction has been made in accordance with the provision of Section 23 of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'said Act') and the rules framed thereunder and upon obtaining conversion from the appropriate authority.

Mr. Seth, learned advocate appearing on behalf of the respondent nos.6 to 13 submits that the construction was made prior to coming into force of the Panchayat Act as also

introduction of Section 4C of the West Bengal Land Reforms Act, 1955.

Such contention of Mr. Seth is disputed by the petitioner. It is the specific contention of the petitioner that the construction has been made recently.

These factual disputes cannot be decided by the Court. The petitioner is at liberty to approach the concerned Block Land and Land Reforms Officer for information as to whether any conversion of the said land had taken place or whether the authority had recorded the prior change of user and subsequently allowed the conversion.

The panchayat authorities shall dispose of the representation of the petitioner December 14, 2022 being Annexure P-3 at Page 15 of the writ petition in accordance with law.

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 Nos. 6 to 13. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 6 to 13 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 respective premises.
- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and was

continuing, the authorities may take such interim measures by stopping such construction.

- c) 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. 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 permission and/or without conversion and/or in violation of the building rules. Also, the age of the building and whether such building existed prior to the promulgation of the West Bengal Panchayat Act, shall be decided.
- e) A hearing shall be given to the petitioner and the respondent nos.6 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, 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 petitioners 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.)