

S/L 15
18.01.2023
Court. No. 19
GB

W.P.A. 296 of 2023

Ramkrishna Mandal
VS
The State of West Bengal & Ors.

Mr. Udayan Roy,
Mr. Sukhendu Banerjee,
Mr. Dilip Mandal,
Mr. Debabrata Roy

...for the Petitioner.

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

Despite service, none appears on behalf of the respondents. As this Court is not inclined to pass any mandatory directions but is relegating the matter before the competent authority to decide the issues involved, the writ petition is taken up and disposed of in their absence.

The petitioner alleges that the respondent nos.11 and 12 have encroached over a portion of a PWD road which was under the control of the panchayat authorities. Reference has been made to Section 25 of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'said Act'). According to the petitioner, such alleged construction has obstructed the ingress and egress of the petitioner to and from his residential house. The petitioner alleges that the panchayat authorities have been empowered by the said Act to remove such unauthorized construction.

Section 25 of the said Act deals with the powers of the gram panchayat over public streets, waterways and other

matters. Sub-Section 2 of Section 25 provides that the gram panchayat may by a notice in writing require any person who has caused obstruction or encroachment or any damage to any public street or drain within the control and management of the gram panchayat, to remove such construction or encroachment. Sub-Section 3 provides that if such construction or encroachment is not removed, the gram panchayat may cause such obstruction or encroachment to be removed and recover the expenses for such removal as a public demand. Sub-Section 4 provides that for purpose of removal of the obstruction the panchayat may apply to the Sub-Divisional Magistrate and the Sub-Divisional Magistrate on such application provide necessary help.

Prior to removal, an opportunity of being heard must be given to the persons allegedly responsible for such encroachment.

The writ petition is disposed of with a direction upon the Gobindakati gram panchayat to treat the writ petition as a representation of the petitioner and dispose of the same in accordance with law. A spot inspection in the presence of the parties shall be made in order to ascertain whether the contentions of the petitioner are correct and whether the alleged construction of the respondent nos.11 and 12 falls on a public street. A report shall be prepared and handed over to the. Parties shall respond to the report and make their submissions at the hearing. If the construction is found over any other private land, the panchayat authorities shall not take any further steps. In that event, the petitioner shall avail

of the remedies under the civil law. However, if it is found that the construction is on a public street, then the portion of the construction on the public street shall be removed in accordance with law. A reasoned order shall be passed and communicated to all. The matter shall be reached to its logical conclusion, in accordance with law.

If the panchayat authorities find that the control and management of the public street continues to remain with the P.W.D., or any other authority, in that event, the entire matter shall be transmitted to the appropriate authority having control over such road and thereafter, such authority will take action in accordance with the applicable laws upon granting an opportunity of hearing to the parties.

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

(Shampa Sarkar, J.)