

S/L 18
11.1.2023
Court. No. 19
sn

W.P.A. 399 of 2023

Nimai Chand Shit & Anr.

VS

The State of West Bengal & Ors.

Mr. Soumen Kr. Dutta
Mr. Sabyasachi Bhattacharjee

.....for the petitioners

Mr. L.M. Mahata
Mr. P.B. Mahata

...for the State.

Mr. Rudranil De

..for the respdt.7

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

The petitioners allege that the construction by the respondent no.8 on LR plot nos. 449,450,448,454,482,483,675,205/1451 under mouza Deulbarh, was an unauthorized construction.

It is the specific contention of the petitioners that in the garb of constructing under the Pradhan Mantri Awas Yojana (G), more than 2500 sq.ft. has been erected. The petitioners allege that the drawing/sketch plan, lay out plan granted by the authorities for such construction, was not followed.

Mr. Mahata, learned Additional Government Pleader submits a report prepared by the Block Development Officer dated January 6, 2023. It appears that a construction under PMAY(G) had been sanctioned during the financial year 2017-18. First instalment of Rs. 40,000/- had been released in favour of such construction. Subsequently, the amount

was refunded by the beneficiary owing to his inability to construct the house due to personal reasons. Thus, the authority submits that the present construction did not have anything to do with the Pradhan Mantri Awas Yojana (G).

Under such circumstances, the contention of Mr. Dey that the construction was exempted from the applicability of Section 23 of the West Bengal Panchayat Act, 1973 is, prima facie, not justified.

The petitioners have approached the panchayat authorities by a representation dated December 12, 2022, which is Annexure P/3 at page 46 to the writ petition.

Without going into the merits of claims of the petitioners, this writ petition is disposed of with a direction upon the Marishda 5 No. Gram Panchayat to dispose of the representation of the petitioners in accordance with law. If it is found that the height and the plinth area of the construction would require permission/vetting from any other authority, then the representation shall be sent by the Gram Panchayat to the said authority. Irrespective of whether the permission granting authority is the gram panchayat or the panchayat samity or the zilla parishad, the issue of unauthorized construction shall be decided by the competent permission granting authority in accordance with law and appropriate steps shall be taken pursuant to such decision.

While deciding the issue, the permission granting authority whoever it may be, shall adhere to the following procedure:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent nos.7&8. An advance notice of such inspection shall be served upon the petitioners and the respondent nos.7&8 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 premises.
- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and had been continuing, the permission granting authority may take 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 questions of right, title, possession and any boundary disputes shall not be decided by the permission granting authority.
- e) A hearing shall be given to the petitioners and the respondent nos.7&8. 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 permission granting

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 accordance with law.

The court has not gone into the merits of the claims of the petitioner and the issues involved shall be decided independently, upon hearing the parties.

The entire exercise shall be completed within a period of four months from 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.)