

24.01.2023
Sl. No.7(DL)
srm

W.P.A. No. 440 of 2023

Biseswari Bhunia & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Gopal Chandra Ghosh,
Mr. Rajkrishna Mondal

....for the Petitioners.

Mr. Susanta Pal,
Ms. Ananya Neogi

...for the State-respondents.

Despite service, none appears on behalf of the respondent Nos.2, 7 and 12 to 15. Affidavit-of-service is taken on record.

The Court is not inclined to pass mandatory directions as prayed for. The matter is sent back to the competent authority. The writ petition is thus, taken up in the absence of the respondent Nos.12 to 15.

The petitioners allege that the petitioners and the respondent Nos.12 to 15 are the co-sharers in respect of LR Dag Nos.1616 and 1618 of mouza Shyamsundarpur, District-Psaschim Medinipur. It is the specific contention of the petitioners that a partition suit is pending between the parties being Title Suit No.315 of 2021. Such title suit was filed by the petitioner No.2 as a co-sharer. The ad interim

order in the nature of *status quo* was also passed by the learned civil court in respect of the plots.

The allegation is that despite such orders of the learned civil court and the pendency of a partition suit, the respondent Nos.12 to 15 started raising a construction without any permission from Bhemua Gram Panchayat. It is further alleged that those plots have been classified as 'agricultural lands' and have not been converted to '*bastu*'.

Reference has been made to an answer given to the petitioners under the Right to Information Act. The Pradhan of the concerned gram panchayat had intimated that no permission for construction of a concrete structure had been given by the said gram panchayat in respect of the said plots in question.

The photographs annexed to the writ petition indicate that a G+1 storeyed brick-built structure is being constructed.

The Court is not in a position to enter into a factual enquiry in this regard. The correctness of the allegation also cannot be decided.

The police report filed by the State-respondents is taken on record. It indicates that there was a dispute over the land in question and a criminal investigation had been initiated on the basis of the complaint filed by the

petitioner No.1. Such investigation resulted in filing of a charge sheet.

Without going into the merits of the writ petition, this Court is of the view that the representation of the petitioners must be disposed of by the permission granting authority, that is, the Bhemua Gram Panchayat, District-Paschim Medinipur.

As such, the writ petition is disposed of with a direction upon the competent authority of the Bhemua Gram Panchayat, District-Paschim Medinipur, to dispose of the representation of the petitioners dated July 11, 2022 being annexure P-6 at page 45 to the writ petition, in accordance with law. While doing so, the gram panchayat, shall adhere to the following procedure:-

- a) Inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent Nos.12 to 15, with 48 hours advance notice to the petitioners and the respondent Nos.12 to 15.
- b) Report of the inspection shall be prepared along with the sketch maps indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioners as also the respondent Nos.12 to 15.

- d) In case, it is found on preliminary inspection that there may be reasons to believe that the constructions were without permission and had been continuing, the authorities may take interim measures by stopping such construction.
- e) A hearing shall be given to all the parties. 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.
- f) Reasoned order shall be passed and communicated to the parties in respect of the alleged construction. 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 provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

The Court has not gone into the merits of the claim of the petitioners and the issues raised shall be decided by the appropriate competent authority.

The question of title, possession, encroachment, etc. shall not be gone into.

A copy of the writ petition along with a server copy of this order be served upon the Pradhan, Bhemua Gram Panchayat, District-Paschim Medinipur.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)