

25.01.2023
Sl. No.6(DL)
srm

W.P.A. No. 514 of 2023
Rabin Mandal @ Rabindranath Mondal & Ors.
Versus
The State of West Bengal & Ors.

Mr. Md. Zeeshanuz Zaman
....for the Petitioners.

Mr. Tapas Kumar Adhikari,
Mr. Joydip Bose
...for the State-respondents.

Mr. Sambhu Nath Sardar
...for the Respondent Nos.8 to 15.

Affidavit-of-service is taken on record.

Postal articles containing the copies of the writ petition which were sent to the respondent Nos.8 to 15 have come back with the endorsement “refused”. The envelopes have been filed in Court today. The learned Advocate has appeared on behalf of the said respondents, upon intimation.

The petitioners claim to be the exclusive owners of LR Dag No.111 corresponding to LR Khatian Nos.1396 and 1693 of mouza Goranberia, District-South 24-Parganas. It is submitted that the respondent Nos.8 to 15 have encroached such land and raised an illegal construction.

The learned Advocate for the respondent Nos.8 to 15 submits that the said respondents are co-sharers in respect of the said plot in question.

The report submitted by the Block Development Officer, Bhangar-I Development Block, South 24-Parganas, prepared by the Upa-Pradhan of Durgapur Gram Panchayat, South 24-Parganas, is taken on record.

The report indicates that there is a construction on the said plot. The petitioners as also the respondent Nos.8 to 15 are residing on the said plot. No records were available in the office of the gram panchayat showing that permissions had been granted either to the petitioners or the respondent Nos.8 to 15, before the respective constructions had been raised.

Under such circumstances, the writ petition is disposed of with a direction upon the competent authority of the Durgapur Gram Panchayat, District-South 24-Parganas, to dispose of the representation of the petitioners dated December 6, 2022 being annexure P5 at page 60 of 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.8 to 15, with 48 hours advance notice to the petitioners and the respondent Nos.8 to 15. As the respondent Nos.8 to 15 submit that the construction of the residential unit in which they are residing was built prior to the promulgation of West Bengal Panchayat Act, 1973, the panchayat authorities shall also determine the age of the dwelling unit used by the respondent Nos.8 to 15. Such inspection shall be held to ascertain whether the dwelling unit or the portion of the dwelling unit used by the respondent Nos.8 to 15, had been constructed before the panchayat laws were in place.

- 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.8 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) A 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. This order will not preclude the authority from taking steps in respect of the dwelling unit of the petitioner, if the same is also found to be unauthorized.

The Court has not gone into the merits of the claim of the petitioners and the issues raised shall be decided by the 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, Durgapur Gram Panchayat, District-South 24-Parganas.

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.)