

S/L 15
30.1.2023
Court. No. 19
sn

W.P.A. 701 of 2023

Shanti Kumar Dey
VS
The State of West Bengal & Ors.

Mr. Jyotin Prakash Chatterjee

...for the Petitioner.

Ms. Sima Adhikari
Ms. Mitali Mukherjee

....for the State.

Mr. Firdous Samim
Ms. Gopa Biswas

..for the respd. 8

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

The petitioner alleges that the respondent no.8 raised a construction on dag no. 1760 of mouza Ujana, without any permission. Reference has been made to the answer given to the petitioner under the Right to Information Act.

The Pradhan, Bhagra Mulgram Gram Panchayat intimated the petitioner on November 25, 2022 that no permission for construction on the said plot had been granted in respect of the respondent no.8.

Learned advocate for the respondent no.8 denies the allegation of the petitioner and submits that there was an existing mud house with a tin shed which did not require any permission. In addition to the mud house, a latrine had been constructed. According to the learned advocate, no permission was necessary for such construction of latrine before 2015.

Learned advocate further interprets the legislative of intent of third proviso to Section 23 of the West Bengal

Panchayat Act, 1973 (hereinafter referred to as the said Act). According to the learned advocate, the panchayat authorities were restrained from granting permission for construction and erection of new structures or new buildings if the proposal of such buildings or constructions did not have any provision for sanitary latrines but had provision of dry latrines. Such proviso was incorporated in 2015. According to Mr. Samim, the latrine had been constructed before the amendment and as such, the construction could not be considered to be unauthorized or illegal.

The contention of Mr. Samim is not accepted by the Court.

The proviso referred to above, debars the panchayat authorities from granting permission for construction of a building or a structure in case the building plan did not provide for a sanitary latrine. The construction of new structure or building or additional/alteration of any structure or building having a plinth area of 150 sq. metre and a height of not more than 6.5 metre, must be permitted by the gram panchayat under Section 23 of the said Act. Mud houses with tin sheds or thatched roofs are exempted under Rule 19 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004. Any brick built concrete construction, would require permission.

The Photographs annexed to the writ petition indicate that a brick built structure had been raised by the side of the existing mud house.

Under such circumstances, this writ petition is disposed of with a direction upon the Bhagra Mulgram Gram Panchayat to treat the writ petition as a representation and dispose of the same in accordance with law by dealing with the allegation made by the petitioner.

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 no.8. An advance notice of the inspection shall be served upon the petitioner and the respondent no.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 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 had been 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 questions of right, title, possession and boundary disputes, shall not be decided by the panchayat authorities.

- e) A hearing shall be given to the petitioner and the respondent no.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 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 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 the date of communication of this order.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

The learned advocate on record for the petitioner is directed to serve a copy of the writ petition along with a server copy of this order upon the Bhagra Mulgram Gram Panchayat.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)