

13.02.2023
Sl. No.11(DL)
srm

W.P.A. No. 751 of 2023

Sridam Jana

Vs.

The State of West Bengal & Ors.

Mr. Sukumar Ghosh,
Ms. Moumita Ghosh

....for the Petitioner.

Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata

...for the State-respondents.

Mr. Uttam Kumar Bhattacharya

...for the Purba Medinipur
Zilla Parishad.

Mr. Saibal Acharya,
Mr. Banshi Badan Maity

...for the Respondent Nos.9 to 11.

Affidavit-of-service is taken on record.

The petitioner alleges that a G+4 storeyed concrete structure had been raised by the respondent Nos.9 to 11 without any permission from the Purba Medinipur Zilla Parishad and without conversion of the land to '*bastu*'. Such construction has allegedly been made on LR Dag Nos.87 and 88 of mouza Hirapur.

Mr. Acharya, The learned Advocate for the respondent Nos.9 to 11 denies the allegation and submits that such allegation was baseless and frivolous. The

construction was not G+4 storeyed. The panchayat authorities had already granted permission for construction and the construction had been made in accordance with such permission.

These disputed questions of fact which have arisen, cannot be decided by the Court. The concerned permission granting authority shall take steps in case unauthorised construction is detected.

The writ petition is disposed of with a direction upon the competent authority of the Purba Medinipur Zilla Parishad, to treat the writ petition as the representation of the petitioner and dispose of the same in accordance with law.

The Purba Medinipur Zilla Parishad shall cause an inspection in the presence of the parties. If the said authority finds that the alleged construction was upto a height of 6.5 mtr. and had a plinth area of less than 150 sq. mtr., the matter shall be referred to the Bishnubar-II Gram Panchayat and the panchayat authorities shall then consider the allegation of unauthorised construction in accordance with law. Whether any construction had been made in deviation of any plan or in absence of any plan or without any conversion, shall be decided.

In either case, irrespective of who would be the permission granting authority, namely, the Purba Medinipur Zilla Parishad or the Bishnubar-II Gram Panchayat, the allegation of unauthorised construction shall be disposed of by adhering to the following procedure:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent Nos.9 to 11, with 48 hours advance notice to the petitioner and the respondent Nos.9 to 11.
- b) A report of the inspection shall be prepared along with a sketch map indicating whether any construction had been without any sanction or in the absence of any sanction or in deviation of the sanction.
- c) Such report shall be handed over to the petitioner as also the respondent Nos.9 to 11.
- d) 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 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. 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.
- g) If the proceedings are conducted by the zilla parishad, Section 160A(6) of the West Bengal Panchayat Act, 1973 shall be followed. If the gram panchayat decides the matter, in that event, Section 23(5) of the West Bengal Panchayat Act, 1973 will be followed.

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 claims of the parties and the issues raised, shall be decided by the competent permission granting 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 Sabhadhipati, Purba Medinipur Zilla Parishad.

As no affidavit-in-opposition has been called for, the allegations against the respondent Nos.9 to 11 are deemed to be denied.

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.)