

24.01.2023
Court No. 19
Item No.17
CP

W.P.A. No. 778 of 2023

Alok Kumar Das

Vs.

The Prodhan, Sitahati Gram Panchayat & Ors.

Mr. P. K. Bhattacharyay

....for the petitioner.

Affidavit of service is taken on record.

Despite service, none appears on behalf of the respondents.

As the court is not inclined to pass any mandatory order as prayed for, but is relegating the matter before the authority empowered by law to decide the issue of unauthorized construction, the matter is taken up in the absence of the respondents.

The petitioner alleges that the respondent no. 6 is raising an unauthorized construction by encroaching a portion of L.R. Plot No. 653 pertaining to L.R. Khatian Nos. 875 and 696 of Mouza – Sankhai, without any permission from the panchayat authorities. The petitioner claims to be owner of a portion of the said land in question.

The pleadings in the writ petition and the contentions of the petitioner in the representation filed before the panchayat authorities do not tally. Thus, no order can be passed in the writ petition.

The petitioner is granted liberty to approach the panchayat authorities which is the permission granting authority, by filing a proper representation indicating his grievances. Stray and omnibus allegations shall not be entertained. The petitioner has to approach the authority specifying the objections he has with regard to the said construction.

If the representation is filed, the same shall be disposed of in accordance with law by the Sitahati Gram Panchayat. 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. 6. An advance notice of the inspection shall be served upon the petitioner and the respondent no. 6 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 was 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.
- e) A hearing shall be given to the petitioner and the respondent no. 6. 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. The issue whether at the relevant point of time the panchayat laws were applicable or not, must also be looked into.
- 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.

The court has not gone into the merits of the claims.

The entire exercise shall be completed within a period of four months from the date of receipt of the application.

The disputes with regard to title, possession and boundary etc., shall not be decided by the panchayat authorities. The only question to be decided by the panchayat authorities would be whether the construction has been made without any permission and/or in violation of the building rules and the relevant laws.

A copy of the writ petition along with a server copy of this order be served upon the concerned gram panchayat for necessary compliance 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.)