

24.01.2023
Court No. 19
Item No.21
CP

W.P.A. No. 917 of 2023

Utpal Basu Mallik

Vs.

The State of West Bengal & Ors.

Mr. Alope Chatterjee
Mr. Partha Chakraborty
Ms. D. Shukla

....for the petitioner.

Ms. Sipra Mazumdar
Ms. Prativa Ghatak

...for the State.

Mr. Sailendranath Chakrabarty
Mr. A. Chakrabarty

...for the respondent nos. 9 to 12.

The petitioner contends that the petitioner, his brother, sister and mother are owners in respect of a land measuring 1.17 acres out of 3.12 acres, in L.R. Dag No. 2671, which has been classified as a 'pukur' (tank). The said plot is situated in Mouza – Susunia and pertains to L.R. Khatian Nos. 1431 to 1434.

The allegation is that construction has been made without conversion of the land to 'Bastu'. Such construction was allegedly done by digging up a part of the bank of the tank. There is allegation of encroachment over a public pathway. Further allegation is that the construction was not permitted by the gram panchayat.

Learned advocate for the respondent nos. 9 to 12 has denied the allegations. According to the said respondents, no construction had taken place which would require permission from the panchayat authorities. A cowshed had been in existence since long and the said cowshed was exempted from the provisions of Section 23 of the West Bengal Panchayat Act, 1973. Reliance is placed on Rule 19 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004. It is also submitted that there are 36 co-sharers in respect of the plot in question.

The petitioner has already approached the Susunia Gram Panchayat by filing a representation dated November 15, 2022, being Annexure P-2 at page 23 of the writ petition. Such representation shall be considered and disposed of by the concerned permission granting authority in accordance with law. The only issue that will be decided is whether any concrete brick built structure has been raised on L.R. Dag No. 2671 corresponding to L.R. Khatian No. 1432, without any permission from the authority and without any conversion.

While doing so, the following procedure shall be adopted by the authority:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of

the petitioner and the respondent nos. 9 to 12 and other co-sharers of the said plot. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 9 to 12 and other co-sharers of the said plot. 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 nos. 9 to 12 and other co-sharers of the said plot. 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.

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 communication of this order.

The disputes with regard to title, possession and boundary etc., shall not be decided by the panchayat authorities.

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.)