

27.02.2023
Sl. No.12(DL)
srm

W.P.A. No. 1036 of 2023

Farhad Hossain & Anr.

Versus

The State of West Bengal & Ors.

Mr. Rabindranath Mahata,
Mr. Aritra Shankar Ray

....for the Petitioners.

Mr. Manas Kundu,
Md. Mansoor Alam

...for the State-respondents.

Mr. Biswajit Konar,
Mr. Arijit Mahinder

...for the Respondent Nos.6 to 8.

The report prepared by the Block Development Officer, Debra Development Block, Paschim Medinipur as also the inspection report prepared as per the direction of this Court, have been filed by Mr. Kundu, learned Advocate for the State-respondents. Those are taken on record.

It appears that a field enquiry was conducted and an inspection was made in the presence of the parties. It was found that one Allarakha Shah had constructed a building for residential purpose over Plot No.249 and also covering a part of Plot No.244 of mouza Dalapatipur. The permission from the Pradhan, Debra Gram Panchayat

dated October 4, 2007 was produced before the inspecting team indicating that the permission for construction was granted in respect of Plot No.249. The inspection team did not find any certificate with regard to the conversion of Plot No.244. The records reveal that Plot No.244 has been classified as a '*pukur*'. The inspecting team found that the pond had been filled up by earth by the respondent Nos.6, 7 and 8.

The learned Advocate for the petitioners submits that the validity and the veracity of the permission allegedly granted for construction by the panchayat authorities on Plot No.249 was required to be ascertained as the petitioners believe that the construction was without any permission. Learned Advocate further submits that Plot No.244 was a water body and jointly owned by the parties. No construction could have been permitted on the said plot.

Thus, the *prima facie* finding of the inspection team is that a portion of the water body had been filled up and the construction of the respondent Nos.6, 7 and 8 had extended to such portion.

The learned Advocate for the respondent Nos.6, 7 and 8 denies the allegations. He submits that the pond was

never filled up by the said respondents and no construction had been made on the pond, that is, on Plot No.244.

These disputed questions of facts cannot be determined by the writ court.

This Court is *prima facie* satisfied that the petitioner has made out an arguable case and the matter is required to be adjudicated by the permission granting authority, that is the Debra Gram Panchayat on the following points:-

- (a) Whether any permission had been granted for construction on Plot No.249 in terms of the provisions of the West Bengal Panchayat Act and rules framed thereunder?
- (b) Had such permission had been granted, whether the construction of the respondent Nos.6, 7 and 8 was restricted to the permission or had extended beyond the permission and the sanctioned plan granted.
- (c) Whether the alleged water body had been filled up without conversion?
- (d) What steps should be taken by the appropriate authority for restoration of the water body to its original position.

Under such circumstances, the writ petition is disposed of granting liberty to the petitioners to file a comprehensive objection before the gram panchayat after considering the report filed in Court today. Once such objection is filed, the same shall be disposed of in accordance with law upon granting an adequate opportunity to both the parties to make their submissions.

Further inspection may be made in presence of the parties to ascertain the extent of unauthorised construction, if it is found that the permission had been originally granted to the respondent Nos.6, 7 and 8 to construct only on Plot No.249. If no such permission was granted at any point of time, the entire finding to that effect shall be arrived at and the proceedings shall be initiated in terms of Section 23(5) of the West Bengal Panchayat Act, 1973. If permission had been granted but inspection revealed that the construction was beyond the permission and over a water body, steps shall be taken again in terms of Section 23(5) of the West Bengal Panchayat Act, 1973.

In the event of any or all the eventualities which have been mentioned hereinabove, a reasoned order shall be passed and communicated to the parties upon granting them opportunity of being heard.

If it is found that the water body had been filled up by any party, the panchayat authorities would be at liberty to exercise their power under the Panchayat Act for restoration of the water body after asking the Block Land and Land Reforms Officer to demarcate the same.

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

This Court has not gone into the merits of the issues involved and all the issues raised shall be decided by the panchayat authorities.

A copy of the writ petition along with a server copy of this order be served upon the Secretary, Debra Gram Panchayat, District-Paschim Medinipur.

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.)