

S/L 12
8.2.2023
Court. No. 19
sn

W.P.A. 1171 of 2023

Jaba Malik & Anr.
VS
The State of West Bengal & Ors.

Mr. Siddhartha Sarkar

...for the Petitioners

Mr. J.L. De

Mr. Shamim Ul Bari

...for the State.

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

Liberty is granted to the learned advocate on record for the petitioners to correct the cause title with regard to the description of the respondent no.7.

Despite service, none appears on behalf of the respondent nos4,5&7. As this Court is not passing any mandatory orders in terms of the prayers made in the writ petition, but the matter is referred to the concerned Gram Panchayat for necessary action, this writ petition is taken up in the absence of the respondent no.7. The said respondent will be afforded adequate opportunity to make her submissions before the authority with regard to the construction.

The petitioners allege that a boundary wall and an unauthorized construction was being raised by the respondent no.7, adjacent to Dag no. 5818 of mouza Janai.

The petitioners also refers to a letter dated November 29, 2022 addressed to the Block Development Officer by the

Pradhan of the concerned Gram Panchayat indicating that a boundary wall had been erected without any permission.

This Court is of the view that the permission granting authority must direct the Janai Gram Panchayat to dispose of the representation of the petitioners which is Annexure P/2 at pages 21 and 22 of the writ petition.

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 petitioners and the respondent no.7. An advance notice of the inspection shall be served upon the petitioners and the respondent no.7 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 a 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 petitioners and the respondent no. 7. 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.
- g) The issue, that shall be decided are whether the alleged construction was without any permission or sanction and/or in deviation of any permission or sanction.

The court has not gone into the merits of the claims of the petitioners 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 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 petitioners is directed to serve a copy of the writ petition along with a server copy of this order to the Janai Gram Panchayat.

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

(Shampa Sarkar, J.)