

13.02.2023
Sl. No.16(DL)
srm

W.P.A. No. 1873 of 2023

Nengti Ghosh

Versus

The State of West Bengal & Ors.

Mr. Abhijit Sarkar

Mr. Raja Biswas

....for the Petitioner.

Mr. Ziaul Islam,

Mr. Benazir Ahmed

...for the State-respondents.

Affidavit-of-service is taken on record. Despite service, none appears on behalf of the respondent Nos.9 to 11.

The Court is not inclined to pass mandatory directions as prayed for. The matter is being sent back to the competent authority, for necessary steps. The writ petition is thus, taken up in the absence of the respondent Nos.9 to 11 who will be given adequate opportunity of hearing by the authority.

The petitioner alleges that the respondent Nos.9 to 11 have raised a construction without any permission on Plot No.1542/2880 of mouza Belpukur. The portion on which such construction has been made allegedly belongs to the petitioner.

The question of title, possession, etc. is not entertained by the Court. The only relevant question for the purpose of disposal of the writ petition is whether the respondent Nos.9 to 11 had raised any construction without permission from the appropriate permission granting authority or in deviation to any plan or permission that may have been given. The permission granting authority is empowered under Section 23 of the West Bengal Panchayat Act, 1973 to take appropriate steps, if any complaint is received with regard to unauthorised construction. In this case, the petitioner has already approached the Pradhan, Belpukur Gram Panchayat, District-Nadia, by filing a representation being annexure P-2 at page 17 to the writ petition. The same was received by the panchayat authorities on October 12, 2022.

Under such circumstances, the writ petition is disposed of with a direction upon the competent authority of the Belpukur Gram Panchayat, District-Nadia, to dispose of the representation of the petitioner being annexure P2 at page 17 to the writ petition, in accordance with law. While doing so, the gram panchayat shall adhere to the following procedure:-

- a) 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) Such report shall be handed over to the petitioner as also the respondent Nos.9 to 11.
- c) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was not in accordance with law, the authorities may take interim measures by stopping such construction.
- d) 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.
- e) A reasoned order shall be passed and communicated to the parties in respect of the alleged construction. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

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 claim of the petitioner and the issues raised shall be decided by the competent 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 Secretary, Belpukur Gram Panchayat, District-Nadia.

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.)