

27.02.2023
Sl. No.17(DL)
srm

W.P.A. No. 2402 of 2023

Mir Ahammad Hossain

Versus

The State of West Bengal & Ors.

Mr. Debasis Kundu

....for the Petitioner.

Mr. Santanu Kumar Mitra,

Mr. Sudip Sarkar

...for the State-respondents.

Mr. Suman Chakraborty

...for the Respondent No.5/

Gram Panchayat

Syed Julfikar Ali

Syed Farhin Zaman

...for the Respondent No.7.

Affidavit-of-service is taken on record.

The petitioner alleges that the respondent No.7 constructed a building on Plot No.1236 of mouza Pandua being old Dag No.1009, which has been recorded as a '*kabarstan*'. Accordingly, a representation was filed before the Pandua Gram Panchayat, Hooghly.

The learned Advocate for the petitioner alleges that despite such complaint, no steps were taken by the concerned gram panchayat.

Hence, the writ petition has been filed for a direction upon the concerned gram panchayat to act and proceed in accordance with law.

The learned Advocate for the respondent No.7 submits that construction was made in accordance with the plan sanctioned by the gram panchayat sometime in 2012 over plot No.1246. In order to take revenge, the writ petition has been filed after 11 years from completion of the construction. Learned Advocate further submits that the issue of encroachment, etc. is a subject matter of the civil suit and the writ court should refrain from passing any orders on such allegation.

The only issue to be decided is whether the Pandua Gram Panchayat had granted any sanction to the respondent No.7 to construct on Plot No.1246 and whether such construction extended beyond the sanction covering a portion of land in Plot No.1236, which has been recorded as '*kabarstan*'.

Under such circumstances, the permission granting authority, that is the Pandua Gram Panchayat, District-Hooghly, is required to dispose of the representation of the petitioner which is annexure P2 at pages 21-21 to the writ petition, in accordance with law. For the purpose

adjudication of the dispute the following procedure shall be adopted:-

- a) Inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent No.7, with 48 hours advance notice to the petitioner and the respondent No.7.
- b) Such report shall be handed over to the petitioner as also the respondent No.7.
- 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 claims and counter-claims of the parties and the issues raised shall be decided by the competent authority.

The question of title and encroachment by the parties, shall not be gone into by the concerned gram panchayat. The issues to be decided would be whether the alleged construction of the respondent No.7 has been made with a sanction and/or in violation of such sanction.

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

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.)