

Item No.4
28.02.2023
Court. No. 19
GB

W.P.A. 2411 of 2023

Kausar Ali
VS
The State of West Bengal & Ors.

*Mr. Kingsuk Mondal,
Md. Golam Nure Imrohi*

...for the Petitioner.

*Mr. Susovan Sengupta,
Mr. Manas Kumar Sahdu*

...for the State.

*Ms. Sima Ghosh,
Mr. Sanjoy Patra*

...for the Respondent Nso.8 to 10.

The petitioner alleges that the respondent nos.8 to 10 have raised an illegal construction on Plot No.1392 of Mouza-Pusore, by violating the Panchayat Act and Rules.

The learned advocate for the respondent nos.8 to 10 submits that the petitioner does not have any locus to file the writ petition. That the petitioner does not have any right, title and interest in respect of the land in question. That the said respondents have been possessing the said land since long and the dwelling house has been constructed much prior to the coming into force of the Panchayat Act. No new construction has been made.

To rebut such contention of the respondent nos.8 to 10, the learned advocate for the petitioner submits that very recently, by taking advantage of the absence of the petitioner, a new construction has been raised.

These disputed questions of facts cannot be gone into by the writ Court. However, the law provides a mechanism

by which the permission granting authority can determine the issue of illegal construction and thereafter refer the same in terms of Section 23(5) of the West Bengal Panchayat Act, 1973 for necessary action by the Sub-Divisional Officer.

Under such circumstances, the writ petition is disposed of with a direction upon the Banior Gram Panchayat to dispose of the representation of the petitioner in accordance with law.

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 petitioner and the respondent nos.8 to 10. An advance notice of the inspection shall be served upon the petitioner and the respondent nos.8 to 10 and/or 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 in deviation of the building rules and was continuing, the authorities may take such interim measures by stopping such construction.
- c) A 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. The question of title, possession and boundary dispute etc. shall not be decided by the panchayat authorities. The questions to be decided by the panchayat authorities would be whether minor repairs of a old building had been made or whether construction had been made without any permission and/or in violation of the building rules. The age of the building and whether such building existed prior to the promulgation of the West Bengal Panchayat Act shall also be decided.
- e) A hearing shall be given to the petitioner and the respondent nos.8 to 10. The parties must also be allowed to furnish their written objection/version to the 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.

The court has not gone into the merits of the claims of the petitioners and the issues involved shall be decided independently.

The entire exercise shall be completed within a period of four months from the date of communication 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.)