

S/L 12  
01.03.2023  
Court. No. 19  
sn

W.P.A. 2968 of 2023

Sahabuddin Middya  
VS  
The State of West Bengal & Ors.

*Mr. Sk.Abu Abbas Uddin*  
*Mr. Nahid Rahaman*

*...for the Petitioner.*

*Ms. Sutapa Sanyal*  
*Md.Anand Farmania*

*...for the State.*

*Ms. Mekhla Sinha*

*..for the respdts.3&4*

*Mr.Biswajit Manna*

*..for the respondent no.10*

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

The petitioner alleges that the respondent no.10 had  
raised a construction on LR Plot no.1147 of mouza  
Jagatballavpur. According to the petitioner, the land had not  
been converted to homestead.

Mr. Manna, learned advocate for the respondent  
no.10 denies such allegations and submits that no new  
construction has been made and there was an existing old  
construction since long.

These disputed questions of facts can not be gone into  
by the Writ Court.

Law authorizes the permission granting authority to  
determine and decide the allegation of unauthorized  
construction and also to take steps under the provisions of  
Section 23(5) of the West Bengal Panchayat Act,1973.

This writ petition is disposed of granting liberty to the petitioner to file a detailed representation before the Bargachia-II Gram Panchayat. If such representation is filed the same shall be disposed of 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 no.10. An advance notice of the inspection shall be served upon the petitioner and the respondent no.10 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 the 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. Only the allegation of non-conversion of the land and construction without any

permission or in deviation of the permission, shall be considered.

- e) A hearing shall be given to the petitioner and the respondent no.10. 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.

The court has not gone into the merits of the claims of the petitioner 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 receipt of the representation.

The learned advocate on record for the petitioner is directed to serve a copy of the writ petition along with a server copy of this order upon the Bargachia-II Gram Panchayat.

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.)**