

03.02.2023
Court No. 19
Item No.03
CP

W.P.A. No. 2754 of 2017

Sachindranath Naskar

Vs.

The State of West Bengal & Ors.

Mr. Satyajit Mondal

Mr. Malay Dhar

Mr. Shouvik Naskar

....for the petitioner.

Mr. Syed Shamsul Arfin

.....for the State.

Mr. Subhendu Banerjee

...for the respondent No. 6.

Affidavit of service is taken on record.

Affidavit-in-opposition of the Pradhan, Sreepur Gram Panchayat and the State respondents are already on record.

The petitioner alleges that the respondent no. 6 is raising an unauthorized construction on Plot No. 119, corresponding to Khatian Nos. 914 and 918 of Mouza – Hatpara, without any permission from the Sreepur Gram Panchayat.

The respondent no. 6 has filed an affidavit, *inter alia*, stating that no new construction was being raised but there was already an existing structure on the land which was gifted to the said respondent by his predecessor-in-interest.

Reliance has been placed on the L.R. record of rights in support of such claim of ownership.

The pradhan had filed an affidavit-in-opposition, inter alia, stating that the construction which was standing on the land in question was 7 to 8 years' old. A further construction was raised upto the lintel level.

The Block Development Officer has filed an affidavit in the form of a report, inter alia, stating that there was a construction on such plot but no permission had been granted for the same. It has been categorically mentioned that the findings of the gram panchayat as narrated in the affidavit-in-opposition was on the basis of an inspection held in the presence of the parties.

The issue with regard to title and possession of the land in question is not decided by this court. This court is also of the view that the panchayat authorities do not have any authority to decide such dispute. The right, title and interest of the parties are already *sub judice* in a title suit. The only issue which shall be decided by the panchayat authorities would be whether the construction standing on Plot No. 119 had been raised with permission and sanction.

Reliance has already been placed by the petitioner on a reply under the Right to Information

Act, *inter alia*, stating that there was no permission for any construction in respect of the said plot.

Although the panchayat authorities have said that the construction was 7 to 8 years' old, the issue is whether at the relevant point of time there was any requirement under the law for permission to construct.

Under such circumstances, without going into the merit of the claim of the petitioner, the writ petition is disposed of with a direction upon the concerned gram panchayat to treat the writ petition as a representation and dispose of the same, 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. 6. An advance notice of the inspection shall be served upon the petitioner and the respondent no. 6 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 was 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.
- e) A hearing shall be given to the petitioner and the respondent no. 6. 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. The issue whether at the relevant point of time when the construction was made Section 23 of the West Bengal Panchayat Act, 1973 and the Building Rules were applicable or not, must also be looked into.
- 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.

The court has not gone into the merits of the claims.

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

The disputes with regard to title, possession and boundary etc., shall not be decided by the panchayat authorities.

A copy of the writ petition along with a server copy of this order be served upon the concerned gram panchayat for necessary compliance 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.)