

13.03.2023
Sl. No.20(ML)
srm

W.P.A. No. 3116 of 2023
Mohammad Imtiazul Islam
Versus
The State of West Bengal & Ors.

Mr. Rejaul Alam,
Mr. S.M. Hassan,
Ms. Anupama Yasmin

....for the Petitioner.

Mr. Raja Saha,
Ms. Tanusri Chanda

...for the State-respondents.

Affidavit-of-service is taken on record. Despite service, none appears on behalf of the respondent No.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 No.11 who will be given adequate opportunity of hearing by the authority.

The petitioner alleges that the respondent No.11 had forcefully occupied LR Dag No.4702 of mouza Shibda which had been classified as '*bhiti*'. Further allegation is that the said respondent No.11 was intending to raise a construction and trying to occupy the said land forcefully.

Reference has been made to a letter issued by the Pradhan of Guskara Gram Panchayat-II, Purba Bardhaman, *inter alia*, directing the respondent No.11 not store any hay or straw on the aforementioned land and also to stop raising construction.

The police authorities, who were approached by the petitioner, have filed their statements of fact through their learned Advocate, which is in the nature of instructions. The enquiry revealed that the respondent No.11 was in possession of the said land with permission from the father of the petitioner.

Such contention of the police authorities is vehemently denied by the learned Advocate for the petitioner. However, the findings of the police authorities cannot be taken as sacrosanct with regard to the right, title and interest of the petitioner and the respondent No.11 in respect of the land in question.

What has fallen for a decision is whether the respondent No.11 could have raised any construction on a land which had been classified as '*bhiti*' and also without any permission from the permission granting authority.

Storage of hay, construction of cowsheds etc. are beyond the provisions of Section 23 of the West Bengal Panchayat Act. Rule 19 of the West Bengal Panchayat

(Gram Panchayat Administration) Rules, 2004 makes such exception. The panchayat authorities only have the jurisdiction to decide whether any brick built (pucca) construction had been made in terms of Section 23 of the West Bengal Panchayat Act and the Rules prescribed thereunder.

The writ petition is disposed of with the following directions:-

a) The Guskara Gram Panchayat-II, Purba Bardhaman, shall make an inspection in the presence of the parties with regard to the alleged construction.

b) The pleadings reveal that the writ petition is based on apprehension. Thus, if any *pucca* (brick built) construction without any conversion or without any permission is found, only then proceedings shall be initiated in terms of Section 23 of the West Bengal Panchayat Act and reached to its logical conclusion. All parties shall be given adequate opportunity to be present at the time of inspection. A report shall be prepared and supplied to the parties. The parties will be entitled to file their written objections and all documents in support of their claims. Thereafter a reasoned order shall be passed and communicated. Consequential steps shall be taken in accordance with law.

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

This order shall not be construed to be an observation of the Court with regard to the claim of the petitioner of having exclusive right, title and interest over the land in question.

A copy of the writ petition along with a server copy of this order be served upon the Secretary, Guskara Gram Panchayat-II, Purba Bardhaman.

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.)