

ML 64
22.03.2023
Court. No. 19
GB

WPA 3894 of 2023

Monsur Ali Molla
Vs
The State of West Bengal & Ors.

Mr. Indrajit Roy Chowdhury

...for the Petitioner.

*Mr. Bibek Jyoti Basu,
Mr. Uttam Kumer De,
Ms. Ankita Mukherjee*

...for the State.

*Mr. Suranjan Mandal,
Ms. Mousumi Biswas*

...for the respondent No.7.

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

The petitioner alleges that the respondent no.7 had raised a construction on L.R. Plot No.933 of Mouza-Harinarayanpur without any permission and sanction. Initially the petitioner's wife proceeded against such unauthorized construction and also filed a writ petition. The said writ petition was dismissed for default. The petitioner submits that when there was no sanction or permission for such construction, the panchayat authorities should take immediate steps in this regard in terms of Section 23(5) of the West Bengal Panchayat Act, 1973.

Without going into the merits of the allegations made by the petitioner and without making any observation on the right, title and interest of the parties in respect of the land in question, the writ petition is disposed of with a direction upon the Harinarayanpur 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.7. An advance notice of inspection shall be served upon the petitioner and the respondent no.7 and/or on 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 only issue to be decided would be whether the alleged construction of the respondent no.7 was with a plan and/or without a plan.

- e) A hearing shall be given to the petitioner and the respondent no.7. 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.)