

23.03.2023
Court No. 19
Item no.71
CP

WPA No. 4060 of 2023

Sk. Oli Husen Molla
Vs.
The State of West Bengal & Ors.

Mr. Sudip Kushari
....for the petitioner.

Mrs. Chamma Mookherji
Mr. Anirudha Mohanta
.....for the State.

Affidavit of service is taken on record.

Despite service, none appears on behalf of the
respondent no. 5.

As this court is not inclined to pass any
mandatory directions for demolition, but deems it fit
to relegate the matter to the permission granting
authority, this writ petition is taken up in the
absence of the said respondent.

The petitioner alleges that the Monoharpur -
6/2 Gram Panchayat failed to take steps despite
repeated complaints lodged by the petitioner with
regard to alleged unauthorized construction made by
the respondent no. 5.

The petitioner submits that the respondent no.
5 had illegally filled up a 'Doba' and started raising a

construction, without any sanction or permission from the panchayat authorities.

First of all, construction on any land apart from Bastu is not permitted by the West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'said Act') and the Rules framed thereunder. Secondly, Section 23 of the said Act provides a mechanism by which permission should be granted by the permission granting authority before any construction can be raised. The Rules also provide a format and the other compliances.

As the allegation is of unauthorized construction, the writ petition is disposed of with a direction upon the said gram panchayat to dispose of the representation of the petitioner being Annexure P-4 at page 25 of the writ petition. While doing so, the authorities will follow the procedure stated hereinbelow:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no. 5. An advance notice of the inspection shall be served upon the petitioner and the respondent no. 5 and 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 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.
- e) A hearing shall be given to the petitioner and the respondent no. 5. 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.

The court has not gone into the merits of the claims. The issue of co-sharership etc. is not gone into.

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. The issue to be decided would be whether there has been any construction without conversion of the land from 'Doba' to Bastu and whether any permission for such construction had been taken before such construction had commenced.

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.)