

S/L 6
14.3.2023
Court. No. 19
sn

W.P.A. 4539 of 2023

Ganesh Pandit
VS
The State of West Bengal & Ors.

Mr. Anirban Bose
Mr. Satyajit Senapati

...for the Petitioner.

Mr. Manas Kumar Kundu
Mr. Debabrata Mondal

...for the State.

Mr. Somenath Ghoshal
Mr. Rahul Nag

..for the respdt. No.6

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

The petitioner alleges that the respondent no.6 had
started a construction on LR plot no. 930 of mouza Dihi
Bagnan. It appears that Title Suit No. 89 of 2021 between the
parties, is pending before the learned Civil Judge(Junior
Division), 2nd Court at Arambag, Hooghly.

According to the petitioner, the said construction was
in violation of Section 23 of the West Bengal Panchayat Act,
1973, as no permission had been obtained from the
permission granting authority.

Learned advocate for the respondent no.6 opposes
such allegation and hands over a copy of the plan sanctioned
by the Gourhati No.1 Gram Panchayat. It appears that a
single storeyed structure partly commercial and partly
residential (ground floor) had been sanctioned. The
proposed commercial area was around 487.10 sq.ft. and the
proposed residential area was around 498.08 sq.ft. The

specific allegation of the petitioner was that the alleged construction is beyond the sanctioned area.

Having heard the learned advocates for the respective parties, it appears that there is a sanctioned plan. Partly commercial and partly residential, single storeyed structure had been permitted. However, as the petitioner submits that the construction is beyond the sanctioned area, the Court deems it fit to refer the matter to Gourhati No.1 Gram Panchayat, for necessary decision and determination of the issue.

The issues to be decided would be whether the construction of the respondent no.6 was in deviation of the sanctioned plan and beyond the area that had been sanctioned.

While deciding the issues, 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 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.
- 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.
- 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 communication of this order.

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 Gourhati No.1 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.)