

ML 98
24.03.2023
Court. No. 19
GB

WPA 4671 of 2023

Md. Ashfaque Khan
Vs
The State of West Bengal & Ors.

Mr. Aritra Shankar Ray

...for the Petitioner.

*Mr. Subhabrata Datta,
Mr. Banibrata Datta*

...for the State.

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

Despite service, none appears on behalf of the respondent nos.2 and 5 to 11.

The Court is not inclined to keep the writ petition pending as the issue with regard to the unauthorized construction has to be decided by the Salap-I Gram Panchayat.

The matter is taken up in the absence of the respondent nos.5 to 11 in view of the fact that mandatory directions are not being passed adverse to the interest of the said respondents at this stage.

The petitioner has already approached the Pradhan, Salap-I Gram Panchayat by filing a representation which is Annexure-P/7 at Page-51 of the writ petition. The said representation shall be disposed of upon granting an opportunity of hearing to the petitioner and the respondent nos.5 to 11.

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 nos.5 to 11. An advance notice of the inspection shall be served upon the petitioner and the respondent nos.5 to 11 and/or 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.
- e) A hearing shall be given to the petitioner and the respondent nos.5 to 11. 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.)