

Item No. 5
08.02.2023
Court. No. 19
GB

W.P.A. 3719 of 2019

Sufia Khatun & Anr.
VS
The State of West Bengal & Ors.

Mr. S.P. Pahari,
Mr. Tapan Kr. Mahapatra

...for the Petitioners.

Mr. Bipin Ghosh

...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. 5 and 8 to 10. As this Court is not inclined to pass any mandatory directions but is relegating the matter before the competent authority to decide the issues, the writ petition is taken up and disposed of in their absence.

The petitioners allege unauthorized construction by the respondent nos.8 to 10.

It appears that on March 5, 2019 a coordinate Bench of this Court had, prima facie, found that an unauthorized construction was going on. The respondent nos.8 to 10 were restrained from raising further construction. The alleged construction was being raised on LR Plot No.1167 of Mouza-Bahir Sarbamangala.

The writ petition is disposed of with a direction upon the Saraitikar gram panchayat to treat the writ petition as a representation and dispose of the same in accordance with law. The issues that shall be decided would be whether there

has been any construction without any permission or without any sanction plan or in deviation of the sanction plan and/or the building rules and without conversion of the land to Bastu.

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 petitioners and the respondent nos.8 to 10. An advance notice of the inspection shall be served upon the petitioners and the respondent nos.8 to 10 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/or without conversion 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 questions to be decided by the panchayat authorities would be whether the

construction has been made without any permission and/or without conversion and/or in violation of the building rules.

- e) A hearing shall be given to the petitioners and the respondent nos.8 to 10. 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.

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.)