

25.01.2023
Sl. No.415(ML)
srm

W.P.A. No. 4574 of 2022
Jahiruddin Gazi & Ors.
Versus
The State of West Bengal & Ors.

Mr. Soumen Gayen,
Mr. Sandipan Maity

....for the Petitioners.

Affidavit-of-service is taken on record. Despite service, none appears on behalf of the respondents.

The Court is not inclined to pass mandatory directions as prayed for. The matter is sent back to the competent authority. The writ petition is thus, taken up in the absence of the respondents.

The petitioners allege that the authorities of the Baharu Kshatra Gram Panchayat, District-South 24-Parganas have forcefully erected a boundary wall on the petitioners' land. Such construction has been made on LR Plot No.4821 corresponding to Khatian Nos.2148 and 6182 of mouza Baharu. The petitioners contend that the land has been owned and occupied by the petitioners since long, by construction of a dwelling house.

The factual dispute with regard to the above allegation, cannot be decided by this Court. Undoubtedly,

the authorities can acquire private lands, subject to the provisions of law. According to Section 44 of the West Bengal Panchayat Act, 1973, unless the owners of private lands either donate such land to the authority or permit construction by any authority, the land must be acquired. Such exercise had not been allegedly undertaken by the panchayat authorities.

Under such circumstances, the writ petition is disposed of with liberty to the petitioners to approach the Block Development Officer, Joynagar-I Development Block, South 24-Parganas with their grievances. If such representation is filed, the same shall be disposed of in accordance with law, upon hearing the petitioners and the respondent No.6. The authority shall cause a demarcation of the land of the petitioners with the help of the Amin from the Block Land and Land Reforms Office. Such demarcation shall be made with reference to the mouza map, land records and title deeds of the petitioners.

If it is found that the construction had been made on the land owned and occupied by the petitioners, the panchayat authority shall follow the provisions of Section 44 of the West Bengal Panchayat Act, 1973. If it is found that the allegation of the petitioners are not correct, a reasoned order shall be passed and communicated. The

result of the hearing in either case, shall be intimated to all the parties.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

The construction which has been made so far, shall abide by the final decision of the authority.

The Court has not gone into the merits of the claim of the petitioners and the issues raised shall be decided by the competent authority, independently.

Any dispute with regard to title, shall not be gone into. The only question to be decided will be whether the land, over which the petitioners have a clear title, had been utilized by the panchayat authorities for construction of a wall.

A copy of the writ petition along with a server copy of this order be served upon the Pradhan, Baharu Kshatra Gram Panchayat, District-South 24-Parganas.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)