

Court No. 19

WPA 4856 of 2023

23.03.2023

(A 101)

(S. Banerjee)

Amarnath Shaw & Anr.

Vs.

The State of West Bengal & Ors.

Sk. Jayed Hossain

... AoR of the petitioners

None appears on behalf of the respondents.

Affidavit of service is taken on record.

The respondent nos. 11, 12 and 13 have refused service. The postal articles with the endorsement 'refused', have been annexed to the affidavit of service. The same are taken on record.

The petitioner alleges that the respondent nos. 11 to 13 have raised an unauthorized construction on plot no. 2068 corresponding to Khatian no. 106/1 and 1985/2 of Kharui Mouza, without any permission from the panchayat authorities. It is further submitted that such construction has been made during the pendency of a partition suit, being Title suit No. 184 of 2018, which is pending before the learned Civil Judge (Sr. Division), 1st Court, Tamruk. The specific contention of the petitioner is that the construction has been made without any permission or sanction from the concerned Gram Panchayat.

The court is not inclined to pass any mandatory direction for demolition and the matter is relegated before the permission granting authority for adjudication. The writ petition is disposed of in the absence of respondent nos. 11 to 13 as they will get adequate chance before the authority to defend their construction.

The Kharui Gram Panchayat is directed to dispose of the representation of the petitioner, which is Annexure P-3 at page 20 of the writ application, in accordance with law. 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 respondents. An advance notice of the inspection shall be served upon the petitioner and the respondent 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. The only issue to be decided would be whether the alleged construction of the respondent was in terms of a sanctioned plan and/or without any plan and permission.
- e) A hearing shall be given to the petitioner and the respondents. 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.

(Shampa Sarkar, J.)