

Item No.4
10.04.2023
Court. No. 19
GB

WPA 5061 of 2023

Rajjak Mir
Vs
The State of West Bengal & Ors.

*Mr. Soumik Ganguly,
Mr. Supriyo Shasmal*

...for the Petitioner.

*Mr. A.P. Lahiri,
Mr. S.P. Lahiri*

...for the State.

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

Despite service, none appears on behalf of the respondent no.9. As the Court is not inclined to pass any mandatory direction as prayed for by the petitioner, but deems it fit to relegate the matter to the authority empowered by law to deal with unauthorized constructions, the writ petition is taken up in the absence of the said respondent.

The petitioner alleges that the respondent no.9 had started raising a concrete construction on L.R. Plot Nos.545 and 547 corresponding to L.R. Khatian No.1233 of Mouza-Chaulkhola, without any permission. It is contended that even if the roof of the construction appears to be a temporary shed, yet the walls were brick built. The said construction was not exempted from the provisions of Section 23 of the West Bengal Panchayat Act, 1973.

Mr. Lahiri, learned advocate appearing on behalf of the State respondents submits that the issue of title is sub

judice before a learned civil court and Title Suit No.397 of 2020 is pending. The suit is for partition and permanent injunction. Authorities have also made enquiry and found that there was apprehension of breach of peace in view of the altercation which often took place over the disputed property.

The Court is not inclined to make any observations with regard to the claim of right, title, interest, etc. by the parties. The authorities are also not empowered by law to enter into such dispute. A civil suit is also pending. Thus, the only issue that can be decided by the panchayat authorities, is whether the construction is in accordance with law or not. The petitioner approached the Pradhan, Naskarpur Gram Panchayat, by filing a representation which is Annexure-P/4 at Page 17 of the writ petition. The writ petition is disposed of with a direction upon the Naskarpur Gram Panchayat to dispose of the representation of the petitioner.

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 no.9. An advance notice of the inspection shall be served upon the petitioner and the respondent no.9 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 any sanction 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 issues to be decided would be whether the construction is in accordance with a sanctioned plan and in accordance with the building rules.
- e) A hearing shall be given to the petitioner and the respondent no.9. 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.

If the competent authority finds that the order passed upon hearing the parties in the proceeding before it was in conflict with any order passed by the learned civil court, in that event, the petitioner will be at liberty to approach the learned civil court for necessary modification, clarification, alteration and variation of the order of status quo.

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.)