

Item No.16
14.03.2023
Court. No. 19
GB

WPA 5212 of 2023

Sk. Yousuf Ali & Ors.
Vs
The State of West Bengal & Ors.

Mr. Omar Faruk Gazi

...for the Petitioners.

*Mr. Raja Saha,
Mr. S.P. Lahiri*

...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.6 to 10. As this Court is not inclined to pass any mandatory directions but is relegating the matter to the permission granting 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.6 to 10. The allegation is that a construction is being raised on a 'Pukur Par' in Dag No.3787 within the jurisdiction of Bainan Gram Panchayat. The petitioners had approached the authorities demanding demolition of such construction. The authorities did not take any steps.

Under such circumstances, the writ petition is disposed of with a direction upon the Bainan Gram Panchayat to dispose of the representation of the petitioners which is Annexure-P/9 at Page 49 of the writ petition, 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 petitioners and the respondent nos.6 to 10. An advance notice of the inspection shall be served upon the petitioners and the respondent nos.6 to 10 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 issues that shall be decided by the panchayat authorities are whether the alleged construction has been made on a 'Pukur Par', which had not been classified as 'Bastu' and whether any permission had been granted for such construction or not.

- e) A hearing shall be given to the petitioners and the respondent nos.6 to 10. 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.)