

25.01.2023
Sl. No.417(ML)
srm

W.P.A. No. 5368 of 2022

Sk. Fazle Rahaman

Vs.

The State of West Bengal & Ors.

Mr. Arun Kumar Maiti,
Mrs. Kaberi Sengupta (Mrs. Maiti)
....for the Petitioner.

Mr. Jahar Dutta,
Mr. Bipin Ghosh
...for the State-respondents.

Affidavit-of-service is taken on record. Despite service none appears on behalf of the respondent Nos.6, 7 and 8.

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 said respondents.

The petitioner alleges that the respondent Nos.7 and 8 have started raising a construction on a portion of a land situated at mouza Usti, District-South 24-Parganas without any permission from the Usti Gram Panchayat, District-South 24-Parganas. The petitioner claims to be a co-sharer in respect of the said plot. A partition suit is pending

between the parties. It is also submitted that an order of *status quo* has been passed by the learned civil court.

Without going into the merits of the claims of the petitioner, the writ petition is disposed of with a direction upon the Usti Gram Panchayat, District-South 24-Parganas, to dispose of the representation of the petitioner dated March 8, 2022 being annexure P2 at page 28 of the writ petition, in accordance with law.

If the panchayat authorities, upon inspection of construction come to the conclusion that the height and the plinth area of the building would require a permission from the zilla parishad or the panchayat samiti, then the entire issue with the preliminary finding shall be sent to the concerned permission granting authority. Thereafter, the permission granting authority shall take necessary steps in accordance with law.

In either case, the permission granting authority, be it the gram panchayat or the panchayat samiti or the Zilla Parishad, shall dispose of the issue by adhering to the following procedure:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent Nos.7 and 8, with 48

hours advance notice to the petitioner and the respondent Nos.7 and 8.

- b) A report of the inspection shall be prepared along with a sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also the respondent Nos.7 and 8.
- d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and had been continuing, the authorities may take interim measures by stopping such construction.
- e) A hearing shall be given to all the parties. 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.
- 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 accordance with law.
- g) If the authorities are of the view that consequential steps cannot be taken due to any order of injunction

or *status quo* passed by a competent civil court, in that event, the petitioner will be at liberty to pray for modification or variation of the order of *status quo* so that the authorities are in a position to complete the exercise to be undertaken in respect of an unauthorized construction.

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

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

The question of title, possession, encroachment, etc. shall not be gone into.

A copy of the writ petition along with a server copy of this order be served upon the Pradhan, Usti 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.)