

29.03.2023
Sl. No.16(DL)
srm

W.P.A. No. 5916 of 2023
Tapan Maity
Vs.
State of West Bengal & Ors.

Mr. Shyamal Kumar Das,
Ms. Smita Pal

....for the Petitioner.

Mr. Manas Kundu,
Md. Mansoor Alam

...for the State-respondents.

Affidavit-of-service is taken on record. Despite service, none appears on behalf of the respondent No.5.

The Court is not inclined to pass mandatory directions as prayed for, but deems it fit to send the matter back to the competent authority, for necessary steps. Thus, the writ petition is taken up in the absence of the respondent No.5, who will be given adequate opportunity of hearing by the authority.

The dispute appears to be between a brother and a sister. The petitioner alleges that the respondent No.5 had constructed on a portion of Dag No.2188 corresponding to Khatian No.34, of mouza Bamunari, without leaving adequate side spaces and in violation of the mandatory

building rules. It is submitted that the construction of the respondent No.5 is, thus, unauthorised and illegal.

Without going into the merits of the allegations made in the writ petition, the writ petition is disposed of with a direction upon the permission granting authority, *i.e.* Rishra Gram Panchayat, District-Hooghly to treat the writ petition as the representation of the petitioner and dispose of the same in accordance with law.

While doing so, the permission granting authority shall adhere 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 No.5, with 48 hours advance notice to the petitioner and the respondent No.5.
- b) A report of the inspection shall be prepared along with the sketch map, indicating the extent of unauthorized construction, if any.
- c) Such report shall be handed over to the petitioner as also the respondent No.5.
- 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 terms of the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

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 appropriate competent 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 Secretary, Rishra Gram Panchayt, District-Hooghly.

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.)