

02.01.2023
Court No. 19
Item no.03
CP

W.P.A. No. 5887 of 2022

Smt. Reba Ghosh

Vs.

The State of West Bengal & Ors.

Ms. Rita Bhattacharya

...for the petitioner.

Mr. Jaharlal De

Mr. Shamim-ul-Bari

....for the State.

Despite service, none appears on behalf of the respondent nos. 5 to 7 and 9 and 10.

As the court is not inclined to pass any mandatory order as prayed for, but is relegating the matter before the authority empowered by law to decide the issue of unauthorized construction, the matter is taken up in their absence.

The petitioner alleges that the respondent nos. 9 and 10 have raised certain unauthorized construction. The Executive Assistant & ASPIO, Hariharpur Gram Panchayat intimated the petitioner in answer to a query under the Right to Information Act, that no permission had been granted for construction of a building on Dag No. 208 corresponding to Khatian Nos. 1974 and 1961 at Mouza – Salepur, L.R.

It is the contention of the petitioner that the height of the building is such that the permission

granting authority would be the gram panchayat. In the case in hand, the gram panchayat had itself intimated the petitioner that no construction had been permitted.

Without going into the merits of the claims of the petitioner, the writ petition is disposed of with a direction upon the Hariharpur Gram Panchayat to consider and dispose of the representation of the petitioner dated November 29, 2021, being Annexure P-7 to the writ petition at page 53, in accordance with law and independently. The following procedure shall be adopted while disposing of the matter:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos. 9 and 10. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 9 and 10 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 permission 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.
- e) A hearing shall be given to the petitioner and the respondent nos. 9 and 10. 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. 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. The court has not gone into the merits of the claims 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.

The question of title, possession and boundary etc. shall not be decided by the panchayat authorities. The only question to be decided by the panchayat authorities, would be whether the construction has been made without any permission and/or in violation of the building rules and the relevant laws.

A copy of the writ petition along with a server copy of this order be served upon the concerned gram panchayat for necessary compliance 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.)