

April 25, 2023
Sl. No.14
Court No.19
s.biswas

WPA 6393 of 2023

Arab Ali Sardar

vs.

The State of West Bengal and others

Md. Yusuf Ali, Advocate

... for the petitioner

Ms. Sipra Majumder,
Ms. Prativa Ghatak, Advocates

... for the State

Mr. Haradhan Mondal, Advocate

... for the respondent Nos.6 and 7

Affidavit of service filed by the petitioner is taken on record.

Despite service, none appears on behalf of the respondent No.8.

As the Court is not inclined to pass any mandatory direction as prayed for, but deems it fit to relegate the matter to the permission granting authority for determination of the allegation of unauthorized construction, the writ petition is taken up in the absence of the respondent No. 8.

The petitioner alleges that the respondent Nos.6 to 8 raised a construction on L.R. Plot No.1064 and 613, corresponding to Khatian Nos.2610, 2611 and 2607 in Mouza-Swarupnagar.

According to the petitioner, the alleged construction had not been permitted by the Begumpur Bibipur Gram Panchayat and had been raised without leaving adequate space.

A representation was filed before the Begumpur Bibipur Gram Panchayat on February 1, 2023.

Despite having received such representation, the panchayat authorities did not act in accordance with law.

Learned advocate appearing for the respondent Nos.6 and 7, denies such allegation and submits that an age-old construction had been in existence on the said land and no new construction had been raised. Only some repairs had been undertaken. Learned counsel for the respondent Nos.6 and 7 further submits that permission from the panchayat authorities would not be required for undertaking repairs.

It is alleged by the petitioner, that the Begumpur Bibipur Gram Panchayat intimated him by an answer to a query made under the Right to Information Act, 2005, that no permission for construction was given to the respondent Nos.5 to 8.

Having heard the learned counsel for the respective parties, it appears that the specific allegation of the petitioner is that a new construction had been raised by the respondent Nos.6 to 8 without any permission from the permission granting authority, whereas the said respondents submit that the old dilapidated structure had been repaired. Such disputed questions of fact cannot be decided by this Court.

Hence, this Court deems it fit to direct the Begumpur Bibipur Gram Panchayat to consider the petitioner's representation dated February 1, 2023, which is annexed as Annexure P/4 at page 43 of the writ petition, in accordance with law.

While doing so, the following procedure shall be adopted:-

- a) An inspection shall be conducted by a person having engineering knowledge, so that the age of building can be ascertained. Such inspection shall be held in the presence of the petitioner and the respondent Nos.6 to 8. An advance notice of the inspection shall be served upon the petitioner and the respondent Nos.6 to 8 and on 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. The approximate age of the construction shall be indicated in the report. Whether minor repairs had been done or any addition or alteration or construction had been undertaken by the respondent Nos.6 to 8 shall be indicated in the report.

- d) Such report shall be handed over to the parties. The question of right, title, interest, possession and boundary dispute etc. shall not be decided by the panchayat authorities. The only issue to be decided would be whether the alleged construction was without any sanction or in deviation from such sanction or contrary to the Rules.
- e) A hearing shall be given to the petitioner and the respondent Nos.6 to 8. 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 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 allegation levelled against the respondents.

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 server copy of this order.

(Shampa Sarkar, J.)