

12.04.2023
Court No. 19
Item no.06
CP

W.P.A. No. 6314 of 2023

Ajuda Bibi @ Ajuda Molla

Vs.

The State of West Bengal & Ors.

Mr. Tanmay Basu
Mr. Debdip Mandal

....for the petitioner.

Mr. Naba Kumar Das
Mr. Subhabrata Das

....for the State.

Affidavit of service is taken on record.

Despite service, none appears on behalf of the respondent nos. 3 and 5 to 9.

As this court is not inclined to pass any mandatory directions as prayed for, but deems it fit to relegate the matter to the permission granting authority, this writ petition is taken up in their absence.

The petitioner alleges that the respondent nos. 5 to 9 started raising a construction without any sanction from the concerned gram panchayat and without leaving any mandatory spaces as per the building rules. The further allegation is that the construction is going on at Dag Nos. 1303, 4143, 4329, 4330 and 4331 of Mouza – Kalikatala which have not been classified as 'Bastu'.

Mr. Das, learned advocate appearing on behalf of the State respondents, submits that the petitioner had filed a civil suit being Title Suit No. 187 of 2019 and had been sufficiently protected by an order of injunction. He further submits that further remedies should be availed of before the civil court instead of invoking the jurisdiction of this court under Article 226 of the Constitution of India.

In my view, the issues of right, title, interest and possession are the subject matters of the civil suit and the same shall be decided by the learned civil court, in accordance with law. It also appears that the possession of the petitioner is protected by an ad-interim order.

In this petition, the issue is whether the respondent nos. 5 to 9 could continue with the construction without any permission from the Kalikatala Gram Panchayat and on lands which were not classified as bastu.

Allegation of unauthorized construction and demolition thereof are matters to be decided by the panchayat authorities in terms of Section 23 of the West Bengal Panchayat Act, 1973.

The writ petition is disposed of with a direction upon the Kalikatala Gram Panchayat to consider and dispose of the representation being Annexure P/3, at page 21 of the writ petition, in accordance with law.

While doing so, the authorities will follow the procedure stated hereinbelow:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos. 5 to 9. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 5 to 9 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 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. 5 to 9. 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.

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

The disputes with regard to title, possession and boundary etc., shall not be decided by the panchayat authorities.

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.)