

M/L 255
18.01.2023
Court. No. 19
GB

W.P.A. 5339 of 2019

Bankim Chandra Dhole
VS
The State of West Bengal & Ors.

Mr. Kajal Ray

...for the Petitioner.

Mr. Uday Naraya Betal

...for the Respondent No.6.

The petitioner alleges that the respondent no.6 has raised a construction on L.R. Dag No.284 in Mouza-Barunanpara, without permission and without conversion from 'Doba' to 'Bastu'.

The learned advocate for the respondent no.6 submits that the allegations are false and frivolous. That the construction is a small hut with a tin shed roof and was built much prior to the promulgation of the West Bengal Panchayat Act, 1973 and the rules framed thereunder.

The writ petition is disposed of with a direction upon the Amnan gram panchayat to dispose of the representation of the petitioner which is Annexure-P/3 at Page 35 of the writ petition.

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

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent No.6. An advance notice of the inspection shall be served upon the petitioners and the respondent no.6 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 without conversion and was continuing, the authorities may take such interim measures by stopping such construction.
- c) The 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. The question of title, possession and boundary dispute etc. shall not be decided by the panchayat authorities. The questions to be decided by the panchayat authorities would be whether the construction has been made without any permission and/or without conversion and/or in violation of the building rules. The age of the construction shall also be determined.
- e) If the panchayat authorities or any engineer deployed by the District Magistrate at the request of the gram panchayat, cannot ascertain the age of the building, the District Magistrate shall approach the head of the department of Civil Engineering, Indian Institute of Engineering Science and

Technology, Shibpur for inspection and determination of the age of the construction.

- f) Costs of such inspection shall be borne equally by both the parties.
- g) Advance payment shall be made by the parties to the panchayat authorities as per the cost estimated by the Head of the Department and communicated to the District Magistrate. The District Magistrate shall pass on the estimate to the Secretary of the gram panchayat.
- h) The payment to the Head of the Department shall be made in advance. A qualified person shall be deputed to make such inspection in the presence of all the parties. A report of such inspection shall be forwarded to the District Magistrate by the Head of the Department.
- i) Thereafter, the panchayat authorities shall hand over a copy of the report to the petitioner and the respondent no.6. Such inspection shall be in addition to the inspection to be made by the panchayat authorities in order to ascertain the correctness of the allegation. If the parties do not cooperate during inspection, adverse inference shall be drawn against the non-cooperating party.
- j) A hearing shall be given to the petitioner and the respondent no.6. The parties must also be allowed to furnish their written objection/version to the respective reports and adduce oral and

documentary evidence in support of their contentions before the competent authority. All points raised by either party, will be decided.

- k) 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 court has not gone into the merits of the claims of the petitioners 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.

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.)