

Item No.9
24.04.2023
Court. No. 19
GB

WPA 6529 of 2023

Sahera Khatun
Vs
The Pradhan, Palashi Majhipara Gram Panchayat & Ors.

Mr. Tanmoy Khan

...for the Petitioner.

Affidavits-of-service filed in Court today, be kept with the record.

Despite service on two occasions, none appears on behalf of the respondents.

As this Court is not inclined to pass any mandatory directions but deems it fit to relegate the matter to the authority empowered by law to decide the issue of unauthorized constructions, the matter is taken up in the absence of the said respondents.

The petitioner alleges that the respondent no.4 constructed a single storeyed house on Dag No.639 corresponding to Khatian No.1248 of Mouza-Palashi, without any conversion and without any permission from the concerned panchayat authorities. The petitioner also claims ownership in respect of the said land in question.

The question of ownership of the petitioner is not relevant for discussion, inasmuch as, neither the writ Court nor the panchayat authority has any power under the law to determine such question.

However, the allegation of construction without any permission from the panchayat authorities is subject to

further determination by the gram panchayat, which is the permission granting authority.

Under such circumstances the writ petition is disposed of with a direction upon the Palashi Majhipara Gram Panchayat to dispose of the representation of the petitioner which is Annexure-P/2 at Page-23 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.4. An advance notice of the inspection shall be served upon the petitioner and the respondent no.4 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 conversion and without permission but was continuing, the authorities may take 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. 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 conversion or without any permission or in violation of the building rules.

- e) A hearing shall be given to the petitioner and the respondent no.4. 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 court has not gone into the merits of the claims of the petitioner 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.)