

Item No.16
17.04.2023
Court. No. 19
GB

WPA 6531 of 2023

Biswanath Ghosh
Vs
The State of West Bengal & Ors.

Mr. Anish Kumar Mukherjee

...for the Petitioner.

Mr. Jaharlal De

Mr. Shamim Ul Bari

...for the State.

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

Despite service, none appears on behalf of the respondent nos.4, 5, 8 and 9. The respondent nos. 4, 5, 8 and 9 had been served with a copy of the writ petition on the first occasion. Further notices have been issued which have also been delivered at the addresses of the said respondents. Despite service on both the occasions, the said respondents are absent.

As the Court is not inclined to pass any mandatory direction as prayed for by the petitioner but deems it fit to relegate the matter to the authority empowered by law to decide the issue of unauthorized constructions, the writ petition is taken up in the absence of the respondent nos.8 and 9.

The petitioners allege unauthorized construction by the respondent nos.8 and 9. According to the petitioner, the said construction has been raised on Dag Nos.4843 and 4844 of Mouza-Fulsara, J.L. No.54 corresponding to L.R. Khatian

No.7304, without any permission from the said gram panchayat. Hence, the grievance of the petitioner as contained in the representation made through the learned advocate dated February 13, 2023, shall be disposed of by the gram panchayat in accordance with law.

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 nos.8 and 9. An advance notice of the inspection shall be served upon the petitioner and the respondent nos.8 and 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 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.
- 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 only issue to be decided would be

whether any construction has been raised without sanction and permission.

- e) A hearing shall be given to the petitioner and the respondent nos.8 and 9. 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 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.

Although the petitioner approached the Court on an earlier occasion, it is now submitted that the order passed by this Court on September 16, 2022 in WPA 17207 of 2021 could not be implemented because an error had been committed with regard to the name of the gram panchayat. Thus, the said order is ineffective and unimplementable.

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.)