

Item No.12
11.04.2023
Court. No. 19
GB

WPA 6738 of 2023

Habibul Rahaman Beg
Vs
The State of West Bengal & Ors.

Mr. Salil Kr. Maiti,
Ms. Pinki Saha

...for the Petitioner.

Mr. Rama Prasad Sarkar,
Ms. Anita Debjana

...for the State.

Mr. Mainak Ganguly,
Mr. Abhishek Singh

...for the Respondent Nos.10 & 11.

Affidavit-of-service and the police report filed in Court today, be kept with the record.

The petitioner alleges that the Sub-Divisional Officer Haldia, failed and neglected to take steps in terms of Section 23(5) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'said Act'). According to the petitioner, the construction of shop rooms on Plot No.214 of Mouza-Anarnagar was found to be unauthorized by the Pradhan of Kukrahati Gram Panchayat. Accordingly, the matter was referred to the Sub-Divisional Officer, Haldia for necessary action under Section 23(5) of the said Act. The petitioner seeks direction upon the Sub-Divisional Officer for steps in terms of the said section.

The learned advocate for the respondent nos.10 and 11 opposes such prayer and submits that the alleged construction is in Sutahata Block and the same falls within the jurisdiction of the Haldia Development Authority.

Thus, in terms of Sections 114A and 114B of the said Act, the panchayat samiti would be the permission granting authority and any step that is to be taken with regard to the allegation of the petitioner, should be by the concerned panchayat samiti.

The writ petition is disposed of with liberty to the petitioner to approach the Sutahata Panchayat Samiti in accordance with law, with all his grievances. If such application is filed, the same shall be disposed of in terms of Sections 114A and 114B of the said Act.

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.10 and 11. An advance notice of the inspection shall be served upon the petitioner and the respondent nos.10 and 11 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 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 right, title, interest, possession and boundary dispute etc. shall not be decided by the panchayat authorities.
- e) A hearing shall be given to the petitioner and the respondent nos.10 and 11. 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 accordance with law.

The court has not gone into the merits of the claims of the petitioners and the issues involved shall be decided independently.

The respondent nos.10 and 11 are allegedly protected by an order of injunction. If the order passed by the competent authority in the said proceeding is in conflict with the order of injunction, the petitioner will be at liberty to approach the said authority for necessary modification, clarification and/or alteration of the order of injunction.

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.)