

April 13, 2023
Sl. No.7
Court No.19
s.biswas

WPA 7128 of 2023

Gour Naskar and another
vs.
The State of West Bengal and others

Mr. Hafizur Rahaman,
Mr. Shahan Shah,
Mr. Soumen Barman, Advocates

... for the petitioners

Mr. Naba Kumar Das, Sr. Adv.
Mr. Subhabrata Das, Advocate

... for the State

Affidavit of service filed by the petitioners is taken on record.

Despite service, none appears on behalf of the respondent nos.3, 4, 6, 7 and 8. The Court is not inclined to pass any mandatory orders as prayed for. The matter is relegated to the authority empowered by law to determine the issue of unauthorized construction. Hence, the matter is taken up in absence of the respondent nos.7 and 8.

The petitioners allege that the respondent nos.7 and 8 started raising construction at Plot Nos.698 and 700, Mouza-Gangapur corresponding to Khatian Nos.1323 and 1324 under P.S.-K.L.C., without any permission from the concerned gram panchayat.

This Court is not inclined to decide the disputed questions of fact and directs the Tardah Gram Panchayat to dispose of the representation of the petitioners which is Annexure P-1 at page 17 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 petitioners and the respondent nos.7 and 8. An advance notice of the inspection shall be served upon the petitioners and the respondent nos.7 and 8 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 right, title, interest, possession and boundary dispute etc. shall not be decided by the panchayat authorities. The issues to be decided would be whether the

construction is in accordance with a sanctioned plan or in absence thereof.

e) A hearing shall be given to the petitioners and the respondent nos.7 and 8. 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.

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 server copy of this order.

(Shampa Sarkar, J.)

