

Item No.16
05.04.2023
Court. No. 19
GB

WPA 7523 of 2023

Sukumar Paul & Ors.
Vs
The State of West Bengal & Ors.

Mr. Malay Bhattacharyya,
Mr. Subhrajyoti Ghosh

...for the Petitioners.

Mr. Rabindra Narayan Dutta,
Mr. Abdus Salem

...for the State.

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

Despite service, none appears on behalf of the respondent nos.5 and 6. The Court is not inclined to pass any mandatory direction as prayed for. The matter is sent back to the permission granting authority for determination of the issue of unauthorized construction. Hence, the matter is taken up in the absence of the respondent nos.5 and 6, who will be given adequate opportunity of hearing by the authority concerned.

The petitioners allege that the respondent nos.5 and 6 have raised an unauthorized construction on the bank of a pond, namely, Dag No.139 within Mouza-Haripur. According to the petitioners, the construction is without any sanction and a business is being run from the same.

The petitioners have approached the Pradhan of Balsi-II Gram Panchayat by filing a representation which is at Page 28 of the writ petition.

This court is not inclined to make any observation on the merits of the claim of the petitioners. The permission granting authority, that is the Balsi-II Gram Panchayat shall dispose of the representation of the petitioners 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 petitioners and the respondent nos.5 and 6. An advance notice of the inspection shall be served upon the petitioners and the respondent nos.5 and 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 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 and a

business was being run from the building, without sanction and permission.

- e) A hearing shall be given to the petitioners and the respondent nos.5 and 6. 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 the server copy of this order.

(Shampa Sarkar, J.)