

10.04.2023
Sl. No.18(DL)
srm

W.P.A. No. 7550 of 2023

Md. Ahmadullah Khan

Vs.

The State of West Bengal & Ors.

Mr. S.P. Lahiri

....for the Petitioner.

Mr. Susanta Pal,
Mr. Ananda Dulal Sarkar

...for the State-respondents.

Mr. Amit Baran Dash,
Ms. Ankana Sarkar

...for the Respondent Nos.7 to 9.

The petitioner has alleged that the respondent Nos.7 to 9 had raised an unauthorised construction on Plot No.958 of mouza Jagudasbarh. Reference is made to a notice issued by the Pradhan, Kanaidighi Gram Panchayat, Purba Medinipur, asking the said respondents to appear before the authority with all papers indicating that the construction had been made in accordance with law.

Learned Counsel for the respondent Nos.7 to 9 denies the allegations and submits that a temporary shed had been constructed earlier, which did not require permission from the panchayat authorities.

The law makes it clear that a tin shed roof with concrete walls is not exempted. Only a temporary structure or a mud house without any concrete walls can be raised without permission.

The disputed question of fact which has arisen, cannot be decided by this court.

It appears that an order of *status quo* has also been issued by the learned civil court.

Under such circumstances, the writ petition is disposed of with a direction upon the Kanaidighi Gram Panchayat, Purba Medinipur to decide as to whether the construction of the respondent Nos.7 to 9 is in accordance with law or not.

A temporary structure without concrete walls is exempted from the applicability of Section 23 of the West Bengal Panchayat Act, 1973, but a concrete structure with tin shed or a thatched roof is not exempted. The entire issue shall be decided by the authority in accordance with law.

While doing so, the permission granting authority shall adhere to the following procedure:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent Nos.7 to 9, with 48

hours advance notice to the petitioner and the respondent Nos.7 to 9.

- b) A report of the inspection shall be prepared along with the sketch map, indicating the extent of unauthorized construction, if any.
- c) Such report shall be handed over to the petitioner as also the respondent Nos.7 to 9.
- d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and in violation of the building rules and had been continuing, the authorities may take interim measures by stopping such construction.
- e) A hearing shall be given to all the parties. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions, before the competent authority.
- 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 the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

That the allegation of violation of the order of *status quo* shall be decided by the learned civil court and not by the panchayat authorities. Right, title and interest of the parties, shall also be decided by the learned civil court and not by the panchayat authorities.

If execution of the decision taken by the competent authority under Section 23(5) of the West Bengal Panchayat Act, 1973 is in conflict with the order of *status quo*, the petitioner will be at liberty to approach the learned civil court for clarification, modification and alteration of the order of *status quo*.

The Court has not gone into the merits of the claims and counter-claims of the parties and the issues raised shall be decided by the competent authority, independently.

A copy of the writ petition along with a server copy of this order be served upon the Secretary, Kanaidighi Gram Panchayat, District-Purba Medinipur.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of
this order.

(Shampa Sarkar, J.)