

04.04.2023
Court No. 19
Item no.12
CP

WPA No. 7607 of 2023

Sri Gorachand Panja
Vs.
The State of West Bengal & Ors.

Mr. Gautam Banerjee
Ms. Chumki Das Bairagya
Ms. P. Dey

....for the petitioner.

Mr. Malay Krishna De
Mr. Arunava Maity

.....for the State.

Mr. N. Srinivas
Mr. M.K. Singh

....for the respondent No. 7.

The report filed by the police authorities is taken on record.

The petitioner prays for a direction upon the respondent no. 3, i.e., the Pradhan, Pursurah-II Gram Panchayat to complete the construction of the petitioner's bathroom with the help of police. Alternative prayer has been made for an order upon the said pradhan to allow the petitioner to complete the construction of the alleged bathroom.

The prayers in the writ petition cannot be allowed. On an earlier occasion, on the complaint of the respondent no. 7, a writ petition had been filed. The same was disposed of with a direction upon the Pursurah-II Gram Panchayat to take steps in accordance with law. Initially, the pradhan directed

demolition without holding any inspection and hearing. The order was challenged before this court and this court directed that the procedure laid down in the order dated February 23, 2022 should be followed. The relevant portion of the order dated February 23, 2022 is quoted below:

“Having considered the rival contentions of the parties, this writ petition is disposed of with a direction upon the competent authority of the Pursurah-II Gram Panchayat to dispose of the complaint of the petitioner with regard to the alleged unauthorized construction in accordance with law by adhering to the following procedure:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent No.6 within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondents and all other interested parties. If the parties are not available to accept notice, the authorities shall affix the notice of hearing and inspection at conspicuous places in their respective premises.

b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and was continuing, the authorities may take such interim measures by stopping such construction.

c) The 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.

e) A hearing shall be given to the petitioners and the respondents. 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. 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 the statute. The court has not gone into the merits of the claims and the issues involved shall be decided independently.

g) This order will not prejudice the civil suit, which is pending between other co-sharers.

h) The proceeding shall be restricted only to the allegations of unauthorised construction.

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

Accordingly, the writ petition is disposed of.”

Despite specific directions as to how the panchayat authorities should conduct the inspection, hearing and thereafter proceed in accordance with the West Bengal Panchayat Act, 1973, the authorities did not follow the direction of the court. Instead, the panchayat authorities intimated the Block Development Officer, Pursurah Block that the parties were not ready to settle the dispute, although the construction of the kitchen and the toilet of the petitioner, was within the boundary wall of the petitioner.

The court did not direct the panchayat authorities to settle the dispute amicably. The authorities were directed to determine whether any construction had been made by the petitioner on Dag No. 626 of Mouza – Sodepur without permission/sanction from the said gram panchayat.

It also appears that the Block Development Officer has been interfering with the proceedings, although, he is not empowered by law to do so. The law provides that once the panchayat authorities come to a finding of any illegal or unauthorized construction, the matter has to be referred with the finding and the documents to the Sub-Divisional Officer in terms of Section 23(5) of the said Act. Thereafter, the Sub-Divisional Officer is empowered to proceed in the manner as laid down in the said section.

The writ petition is disposed of with a direction upon the Pursurah-II Gram Panchayat to determine whether any unauthorized construction is going on or not. If any unauthorized construction is going on, the same shall be stopped. Necessary order shall be passed upon hearing all concerned. The matter shall be referred to the Sub-Divisional Officer for necessary action, in case there is a finding of unauthorized construction.

However, if the petitioner applies for permission to construct a kitchen and a bathroom in the prescribed form and with all relevant documents and pays the necessary fees, such application shall be disposed of within four weeks from the date of receipt of the same.

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.)