

25.01.2023
Sl. No.452(ML)
srm

W.P.A. No. 7160 of 2022

Prosad Dhara

Versus

The State of West Bengal & Ors.

Mr. Jyoti Prakash Chatterjee

....for the Petitioner.

Ms. Sipra Majumdar,
Ms. Prativa Ghatak

...for the State-respondents.

Mr. Firdous Samim,
Ms. Gopa Biswas,
Ms. Payel Shome

...for the Respondent Nos.8 & 9.

Affidavit-of-service is taken on record. Despite service none appears on behalf of the respondent No.7.

Supplementary affidavit annexing the answer given by the panchayat authorities to the queries raised by the petitioner under the Right to Information Act, is taken on record.

The petitioner alleges that the respondent Nos.8 and 9 have raised a construction on Plot No.811 corresponding to Khatian No.237 of mouza Barandala, District-Purba Bardhaman, without any permission from the competent permission granting authority.

It appears that a title suit being Title Suit No.106 of 2016 had been filed before the learned Civil Judge (Senior Division) at Kalna in respect of the property in question. The petitioner claims title over such property and hence a suit for declaration of title and permanent injunction had also been filed.

The learned Advocate for the respondent Nos.8 and 9 submit that the civil suit filed by the petitioner had been dismissed for default. It is further submitted that the allegations in the writ petition are in respect of a civil dispute over the right, title and interest of the parties in respect of the said land. It is further submitted that the ground floor had been constructed long time ago when the Panchayat Act and Rules were not in force. It is further submitted that some repairing work had been undertaken but not new construction had been raised. The learned Advocate contends that an application had been filed seeking permission to construct the first floor.

The reply given by the panchayat authorities under the Right to Information Act indicates that no permission had been granted for the alleged construction of the respondent Nos.8 and 9.

Under such circumstances, the writ petition is disposed of with a direction upon the Jamna Gram

Panchayat, District-Purba Bardhaman to treat the writ petition as a representation of the petitioner and dispose of the same, in accordance with law. While doing so, the gram panchayat, 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.8 and 9, with 48 hours advance notice to the petitioner and the respondent Nos.8 and 9. As the respondent Nos.8 and 9 have submitted that the construction of the ground floor was made prior to the promulgation of West Bengal Panchayat Act, 1973, the panchayat authorities shall also determine the age of the ground floor of the respondent Nos.8 and 9. Such inspection shall be held to ascertain whether the ground floor of the respondent Nos.8 and 9 had been constructed when the panchayat law was not in place. Further, whether only repairing work had been undertaken but no additional floor had been constructed above the ground floor shall also be ascertained during the inspection.

- b) A report of the inspection shall be prepared along with a sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also the respondent Nos.8 and 9.
- d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission 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.
- g) If the authorities are of the view that consequential steps cannot be taken due to any order of injunction or *status quo* passed by a competent civil court, in

that event, the petitioner will be at liberty to pray for modification or variation of the order of *status quo* so that the authorities are in a position to complete the exercise to be undertaken as per law in respect of the unauthorized construction.

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

The Court has not gone into the merits of the claim of the petitioner and the issues raised shall be decided by the competent permission granting authority.

The question of title, possession, encroachment, etc. shall not be gone into.

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

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.)