

Item No.18  
11.04.2023  
Court. No. 19  
GB

WPA 7648 of 2023

Smt. Arati Saha  
Vs  
The State of West Bengal & Ors.

*Mr. Tapash K. Bhattacharya,  
Mr. Aviroop Bhattacharya*

*...for the Petitioner.*

*Ms. Sima Adhikari,  
Ms. Kakali Naskar*

*...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.4, 5 and 8. As the Court is not inclined to pass any mandatory direction as prayed for by the petitioner but deems it fit to relegate the matter to the authority empowered by law to decide the issue of unauthorized constructions, the writ petition is taken up in the absence of the said respondent.

The petitioner alleges that the respondent no.8 had started raising an unauthorized construction on L.R. Plot No.1094 of Mouza-Karimpur No.6, without any sanction. According to the petitioner, as pleaded in paragraph 6 of the writ petition, the building is three storeyed.

As per law, the permission granting authority would be the Naida Zilla Parishad. Any building or proposed building, the height of which is more than 6.5 metres and the plinth area is more than 300 sq.mt., must be sanctioned by the Zilla Parishad.

The petitioner is granted liberty to approach the appropriate permission granting authority with the allegations of unauthorized construction. The appropriate authority shall decide the issue in accordance with law. However, the questions with regard to encroachment, right, title, interest, possession, etc., shall not be decided by the authority. The permission granting authority shall act and proceed in accordance with law upon receipt of the petitioner's representation.

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 petitioner and the respondent no.8. An advance notice of the inspection shall be served upon the petitioner and the respondent no.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 title, 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 not.
- e) A hearing shall be given to the petitioner and the respondent no.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 accordance with law.

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.)**