

11.04.2023
Court No. 19
Item No.20
CP

W.P.A. No. 7670 of 2023

Sri Kalyan Saha & anr.

Vs.

The State of West Bengal & Ors.

Mr. Tapash K. Bhattacharya

Mr. Aviroop Bhattacharya

...for the petitioners.

Mr. Rama Prasad Sarkar

Ms. Anita Deb Jana

....for the State.

Mr. Sankar Paul

....for the respondent no. 9.

Despite service, none appears on behalf of the respondent no. 8.

As this court is not inclined to pass any mandatory directions but deems it fit to relegate the matter to the permission granting authority, this writ petition is taken up in the absence of the said respondent.

The petitioners allege that the respondent no. 8 had raised an unauthorized construction of a three storeyed building. A shop room on the 1st floor had been sold to the respondent no. 9.

The respondent no. 9 submits that a shop room had been purchased by the said respondent upon verification of all documents. A plan had been

sanctioned. It is further submitted that the dispute raised by the petitioners is essentially one of encroachment and the same cannot be decided by the authorities under the West Bengal Panchayat Act, 1973.

As the allegation is that a three storeyed building had been constructed, the court deems it fit to allow the petitioners to approach the competent permission granting authority, in accordance with law. If such representation is filed, the same shall be disposed of in accordance with law and independently. While doing so, the competent authorities shall follow the procedure stated hereinbelow:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent nos. 8 & 9. An advance notice of the inspection shall be served upon the petitioners and the respondent nos. 8 & 9 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

permission 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.
- e) A hearing shall be given to the petitioners and the respondent nos. 8 & 9. 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 accordance with law.

The court has not gone into the merits of the claims.

The entire exercise shall be completed within a period of four months from the date of receipt of the representation.

The issues to be decided would be whether the alleged construction is without permission and/or in violation of any permission or the building rules.

A copy of the writ petition along with a server copy of this order be served upon the concerned permission granting authority for necessary compliance 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.)