

Item No.17
04.04.2023
Court. No. 19
GB

WPA 7823 of 2023

Ainul Haque Mollah
Vs
The State of West Bengal & Ors.

Mr. Subhendu Banerjee

...for the Petitioner.

*Mr. Malay Krishna De,
Mr. M.M. Rahaman*

...for the State.

*Mr. Samar Pal,
Mr. Biswaranjan Bhaskar*

...for the Respondent No.5.

Affidavit-of-service filed in Court today, be kept with the record.

The writ petition is disposed of with a direction upon the Uttar Durgapur Gram Panchayat to dispose of the objection filed by the petitioner. The same is Annexure-P/2 at Page 12 of the writ petition.

According to the petitioner, the respondent no.5 raised a construction on Dag No.1121 of Mouza-Alipur, without leaving the requisite spaces between the petitioner's construction and the present construction.

The learned advocate for the respondent no.5 submits that the construction is being raised in accordance with the plan sanctioned by the concerned gram panchayat.

The only issue to be decided in this regard would be whether the construction is in accordance with the plan or in deviation thereof.

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.5. An advance notice of the inspection shall be served upon the petitioner and the respondent no.5 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 in deviation of the plan or the building rules, 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 deviation, 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.
- e) A hearing shall be given to the petitioner and the respondent no.5. 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 terms of Section 23(5) of the West Bengal Panchayat Act, 1973.

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.)