

18.04.2023
Court No. 19
Item no.08
CP

WPA No. 7869 of 2023

Ashok Kumar Das
Vs
The State of West Bengal & Ors.

Mr. Salil Kumar Maiti
... for the Petitioner.

Mr. Rajarshi Basu
Mr. K. M. Hossain
... for the State.

Affidavit of service is taken on record.

Despite service, none appears on behalf of the
respondent nos. 4 ,6, 9 and 10.

As this court is not inclined to pass any
mandatory directions as prayed for, but deems it fit
to relegate the matter to the permission granting
authority, this writ petition is taken up in the
absence of the respondent nos. 9 and 10.

The petitioner alleges that the respondent nos.
9 and 10 had raised a construction on L.R. Plot No.
133 of Mouza – Bamunia, which has been classified
as ‘Jal’. According to the petitioner, without any
conversion of the land from ‘Jal’ to ‘Bastu’ and
without any permission from the Itamagra – II Gram
Panchayat, the respondent nos. 9 and 10 started
raising a construction. Prayer has been made for a
direction upon the gram panchayat to demolish such
construction.

This court is of the view that the issue is required to be disposed of by the Itamagra – II Gram Panchayat, in accordance with the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973. While doing so, the authorities will follow the procedure stated hereinbelow:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos. 9 and 10. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 9 and 10 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 petitioner and the respondent nos. 9 and 10. 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 Section 23(5) of the West Bengal Panchayat Act.

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 communication of this order.

The issues to be decided would be whether any construction had been raised on a land which has been classified as 'Jal' and without any sanction from the permission granting authority. The disputes with

regard to title, possession and boundary etc., shall not be decided by the panchayat authorities.

A copy of the writ petition along with a server copy of this order be served upon the concerned gram panchayat for necessary compliance of this order.

As no affidavit has been called for, allegations are deemed to have been denied.

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.)