

11.04.2023
Sl. No.23(DL)
srm

W.P.A. No. 7872 of 2023

Habib Rahaman

Vs.

The State of West Bengal & Ors.

Mr. S.N. Arefin,
Mr. Partha Chakraborty,
Mahammad Obaid

....for the Petitioner.

Mrs. Jhuma Chakraborty,
Mr. Aritra Ghosh

...for the State-respondents.

Affidavit-of-service is taken on record. Despite service, none appears on behalf of the respondent No.9. Panchayat authorities are also absent.

The Court is not inclined to pass mandatory directions as prayed for, but deems it fit to send back the matter before the competent authority, for necessary steps. The writ petition is thus, taken up in the absence of the respondent No.9 who will be given adequate opportunity of hearing by the authority.

Learned Advocate for the State-respondents submits that proper instructions are yet to be received.

The petitioner alleges that the panchayat authorities had failed and neglected to take steps despite having

received a representation from the petitioner alleging that an unauthorised construction, without any sanction, was being carried on by the respondent No.9 on LR Dag No.993 of mouza Joypul. The said property is the subject matter of a civil suit.

This Court finds from the records that a civil suit is pending between the parties and there is a subsisting order of injunction. The petitioner is at liberty to approach the learned civil court in accordance with law with regard to the allegation of violation of the order of injunction.

The only issue that the panchayat authorities can decide is whether any construction is being made without any sanction plan or in violation thereof.

Under such circumstances, the writ petition is disposed of with a direction upon the Duttapukur-II Gram Panchayat, North 24-Parganas, to dispose of the representation of the petitioner which is annexure P/4 at page 52 of the writ petition, in accordance with law.

While doing so, the permission granting authority 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 No.9, with 48 hours

advance notice to the petitioner and the respondent

No. 9.

- b) A report of the inspection shall be prepared along with the sketch map, indicating the extent of unauthorized construction, if any.
- c) Such report shall be handed over to the petitioner as also the respondent No.9.
- d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and in violation of the building rules 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.

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 claims of the petitioner and the issue raised shall be decided by the competent authority, independently.

A copy of the writ petition along with a server copy of this order be served upon the Secretary, Duttapukur-II Gram Panchayat, District-North 24-Parganas.

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.)