

24.04.2023
Court No. 19
Item no.19
CP

W.P.A. No. 8374 of 2023
Bikash Bharati Welfare Society & anr.
Vs.
The State of West Bengal & Ors.

Mr. Bibek Jyoti Basu
Mr. Uttam Kr. De
Ms. J. Saha
Ms. Ankita Mukherjee

....for the petitioners.

Mr. Ansar Mondal
Ms. Prativa Ghatak

...for the State.

Mr. Prabir Kr. Chaudhuri
Mr. Prosanta Bishal

...for the private respondent.

The petitioner is the owner of a plot of land situated at Dag No. 635 of Mouza – Jungal, measuring about 2 acres 10 decimals, along with a school building situated thereon, having an area of 2400 sq. feet. By a deed of lease executed by the petitioner with one Mrinal Kanti Ghosh, the land and the building had been leased out to the respondent no. 2. A school has been functioning from the said premises.

Mr. Basu, learned advocate for the petitioner, contends that the lease deed contained a clause that without any permission from the lessor, no

construction could be made over and above the existing single storeyed structure. The school, namely, Bikash Bharati Blooms Day School, affiliated to the CBSC is operating from the premises. Photographs have been relied upon to show that substantial brick built construction had been raised.

Learned advocate for the school denies the allegation and submits that a tin shed had been proposed to be installed and some construction had been made. That the school authorities repeatedly requested the petitioner to grant permission for such construction. Reliance has been placed on several letters written to the petitioners. As the school did not get any response from the lessor, the school approached the panchayat authorities for permission and necessary sanction. It is submitted that for the benefit of the school and the students in the locality, such construction was essential.

The court cannot go into the disputed question as to whether partial construction had been raised without any sanction or whether the school authorities are awaiting the decision of the panchayat. Moreover, the law provides that consent for construction has to be given by all the owner of the land.

Under such circumstances, this court is of the view that unless there is either proper sanction from

the panchayat authorities or from the competent permission granting authority, construction cannot be raised. If there are constructions in the absence of any plan or sanction, such construction is liable to be demolished in terms of Section 23(5) of the West Bengal Panchayat Act, 1973 or analogous provisions depending on who would be the permission granting authority.

Under such circumstances, the court directs that the petitioner might approach the Salbani No. 6 Gram Panchayat for necessary steps in this regard. If objection is filed, the same shall be disposed of in accordance with law. While doing so, the gram panchayat 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 no. 2. An advance notice of the inspection shall be served upon the petitioner and the respondent no. 2 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 no. 2. 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 six months from the date of receipt of the petitioner's representation.

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

It is made clear that if the Sub-Divisional Officer in exercise of the power under Section 23(5) of the West Bengal Panchayat Act, 1973 ultimately decides that the demolition should take place, such demolition should be effected during the vacation so that the students do not suffer.

The school authorities could not have raised even a single wall without any permission and the contention that the permission is awaited from the panchayat authorities is also inconsequential in view of the fact that there is no provision under the law for either regularization or post-facto approval.

This order shall not prevent the parties from coming to a unanimous decision with regard to extension of the school building, solely for the benefit of the students. This court is of the view that if there are reasons for expanding the school for the betterment of the students in the locality and for betterment of the infrastructural facilities which every child is entitled to, parties should come to a resolution with regard to the issues involved and

jointly take steps by approaching the competent authority for permission, strictly according to law.

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.

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.)