

Court No. 19

WPA 9053 of 2023

08.05.2023

(AD 5)

(S. Banerjee)

Sk. Ibrahim & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Rittick Pattanayak

Mr. Koustav Bagchi

Ms. Priti Kar

... for the petitioners

Mr. Raja Saha

Ms. Piyali Sengupta

... for the State

Mr. Abhijit Roy

Mr. Santu Nandy

... for the respondent no. 8

By this writ petition, the petitioners have challenged the decision of the Block Development Officer, Burdwan-I Development Block. The Pradhan of Belkash Gram Panchayat was directed to remove the illegal construction/encroachment on Plot No. 268/2648(P) and 268/2649(P), corresponding to L R Khatian No. 1627, 1628 and 2084 at Mouza Yusufabad. Previously, the respondent no. 8 had approached the Pradhan of Belkash Gram Panchayat. The District Magistrate, Purba Bardhaman and other authorities were approached, alleging that the petitioners had encroached into the land in question and had raised a construction without any sanction. The Panchayat authorities did not take any steps.

The District Magistrate referred the matter to the concerned Block Development Officer for necessary action. Accordingly, the Block Development Officer called for the documents from the Panchayat authorities as also from the respondent no. 8 and passed the order impugned on December 7, 2022.

It appears from the order impugned that an admission was made by the respondent no. 2, before the Block Development Officer, that a boundary wall had been constructed for the benefit of the parties and the said petitioner asked for some time to remove the encroachment.

Mr. Pattyanayak, learned advocate for the petitioners, submits that such admission was wrongly recorded and an objection was raised before the Block Development Officer, Burdwan-I Development Block on March 27, 2023.

Learned advocate for the respondent no. 8 submits that when there is already an admission, no other issue needs to be decided by the court. It is further submitted that admittedly, there is no sanction and there has been an encroachment. Further, the Block Development Officer acted on the basis of the direction of the District Magistrate.

Having heard the learned advocates for the respective parties, this court is of the view that the

Block Development Officer, Burdwan-I Development Block could not have decided the issue of encroachment and illegal construction. The issue of illegal construction is to be decided by the Panchayat authorities, i.e., the appropriate permission-granting authority in terms of Section 23(5) of the West Bengal Panchayat Act, 1973. Such proceeding was admittedly neither initiated nor followed. As such, there is an infraction of the law. Further, the issue of encroachment is a dispute which has to be decided by a civil court. Under such circumstances, the order impugned dated December 7, 2022, is set aside and cancelled only on the ground of lack of jurisdiction.

The writ petition is disposed of with liberty to the respondent no. 8 to file a composite representation before the Belkash Gram Panchayat with the allegation of unauthorized construction by the petitioner nos. 1 and 2. If such representation is filed, the same shall be disposed of in accordance with law and while doing so, the following procedure shall have to be adopted.

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no. 8. An advance notice of the inspection shall be served upon the petitioner and the respondent no. 9 and/or 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 in deviation of 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 unauthorized construction, 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. The only issue to be decided would be whether the alleged construction of the respondent was in terms of a sanctioned plan and/or without any plan and permission.
- e) A hearing shall be given to the petitioner and the respondent no. 8. 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.

As there is already an interim finding of unauthorized construction, no further construction shall be raised till the entire decision is taken and permission is granted by the competent authority to raise further construction.

Since no affidavit has been called for, all the allegations made in the writ application shall be deemed to have been not admitted.

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.)