

25.04.2023
Court No. 19
Item no.32
CP

W.P.A. No. 9407 of 2023

Asish Jana

Vs.

The State of West Bengal & Ors.

Mr. Jayanta Samanta

Mr. K. Samanta

....for the petitioner.

Ms. Jayeeta Sinha

Mr. Sandip Mandal

....for the State.

Mr. Salil Kumar Maiti

.....for the respondent nos. 4 & 5.

The petitioner prays for implementation of the order of this court dated November 7, 2022, passed in WPA 23052 of 2022. The allegation is that the authority had not taken any action in terms of the order of this court. The relevant portion of the order is quoted below:

“The inspection shall be made within a period of three weeks from the date of communication of this order with advance notice to the parties.

As the inspection made earlier did not disclose the details of the unauthorized construction, this order is being passed.

If it is found that there are unauthorised constructions the matter and the decision of the gram panchayat shall be referred to the Sub Divisional Officer in terms of Section 23(5) of the West Bengal Panchayat Act, 1973. The Sub Divisional Officer shall conclude the entire proceeding in terms of Section 23(5) of the West Bengal Panchayat Act, 1973.

The entire exercise shall be completed within a month from the date of communication of this order.

This Court is of the view that one last opportunity should be given to the petitioners to be present at the inspection and make their submissions in support of their claim at the hearing as they were absent at the hearing in the earlier round.

The notice of self demolition which is under challenge is set aside as the same is contrary to the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.”

The panchayat authorities had detected unauthorized construction. The panchayat authorities themselves passed an order directing the respondent nos. 4 and 5 to demolish the same. Such order was challenged before the court and the court found that the law did not empower the panchayat authorities to direct self-demolition of an unauthorized construction. Thereafter the above order, which has been quoted, was passed.

Under such circumstances, the writ petition is disposed of with a direction upon the panchayat authorities to comply with the order of this court and dispose of the matter, in accordance with law.

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. 4 & 5. An advance notice of the inspection shall

be served upon the petitioner and the respondent nos. 4 & 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 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. 4 & 5. 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 three months from the date of communication of this order.

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.

The report of the police authorities is taken on record.

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.)