

31.01.2023
Court No. 19
Item 524
CP

WPA No. 9079 of 2022

Chhaya Kundu & ors.
Vs.
The State of West Bengal & Ors.

Mr. Soumik Ganguly

...for the petitioners.

Mr. Malay Bhattacharya

....for the respondent no. 9.

The writ petition is disposed of with a direction upon the Jamkuri Gram Panchayat to treat the writ petition as a representation and dispose of the same in accordance with law.

The allegation is that the respondent no. 9 had filled up a portion of a pond and started raising a construction. According to the petitioners, the record of rights indicate that the land continues to be classified as a pond.

Mr. Bhattacharya, learned advocate for the respondent no. 9, submits that when his client had purchased the said plot, the same was already filled up. The actual physical condition of the plot had changed and it was no longer a water body. He submits that no construction had been raised. He also submits that there are other co-sharers in respect of the said plot and none of the co-sharers have been using the said land as a pond.

All the issues raised by either party shall be decided by the permission granting authority. Whether the construction had been raised by filling up the pond without conversion to 'bastu' and whether such construction was backed by permission from the permission granting authority are to be decided on facts and upon physical verification and inspection. While disposing of the matter, the concerned gram panchayat shall proceed in the following manner:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent no. 9. An advance notice of the inspection shall be served upon the petitioners and the respondent no. 9 and all other co-sharers. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in their respective premises.
- b) Assistance from the office of the Block Land & Land Reforms Office shall be taken to ascertain the actual nature of the pond vis-à-vis the area which has allegedly been filled up by the said respondent.
- c) In case, it is found on preliminary inspection that there may be reasons to

believe that the construction was without conversion of the land and without permission and was continuing, the authorities may take such interim measures by stopping such construction.

- d) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.
- e) Such report shall be handed over to the parties.
- f) A hearing shall be given to the petitioners, and the respondent no. 9 and other co-sharers. 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. The issue whether at the relevant point of time the panchayat laws were applicable or not, must also be looked into.
- g) The only question to be decided by the panchayat authorities would be whether the construction has been made without any conversion and permission from the

authority, and/or in violation of the building rules and the relevant laws.

- h) 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 other authorities empowered by law to deal with the allegations of filling up of a water body, may be approached by the petitioners in accordance with 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.)