

M/L 532
31.01.2023
Court. No. 19
GB

W.P.A. 9119 of 2022

Kazi Firoja Begum & Ors.
VS
The State of West Bengal & Ors.

*Mr. Sani Hossain,
Ms. Salma Sultana Shah,
Mr. Miraj Hossain*

...for the Petitioner.

*Ms. Sutapa Sanyal,
Ms. Susnita Saha*

...for the State.

Affidavit-of-service filed in Court today, be kept with the record.

Despite service, none appears on behalf of the respondent nos.3 and 7 to 9. As this Court is not inclined to pass any mandatory directions but is relegating the entire dispute before the authority empowered by law to determine the issue of illegal and unauthorized construction, the writ petition is taken up in the absence of the respondent nos.7 to 9. The respondent nos.10 to 12 have refused service. Refusal is good service and the writ petition is taken up also in the absence of the respondent nos.10 to 12.

The writ petition is disposed of with a direction upon the Haripal Sahadev gram panchayat to dispose of the representation of the petitioners which is Annexure-P/8 at Page 45 of the writ petition in accordance with law.

While doing so, the following procedure shall be adopted:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent nos.7 to 12. An advance notice of

inspection shall be served upon the petitioners, the respondent nos.7 to 12 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 the construction was without permission and was continuing, the authorities may take interim measures, by stopping such construction.
- c) A report of such inspection shall be prepared along with a 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 questions to be decided by the panchayat authorities would be whether the construction has been made without any permission or in violation of the building rules.
- e) A hearing shall be given to the petitioners and the respondent nos.7 and 12. 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, 1973.

The court has not gone into the merits of the claims of the petitioner and the issues involved shall be decided independently.

The entire exercise shall be completed within a period of four months from the date of communication 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.)