

May 8, 2023
Sl. No. 8
Court No.19
s.biswas

WPA 9502 of 2023

Asit Kumar Patra

vs.

The State of West Bengal and others

Mr. Fazle Rabi

Mr. Hare Krishna Halder

... for the petitioner

Mr. Lalit Mohan Mahata

Mr. Prasanta Behari Mahata

... for the State

Mr. Asoke Bhowmik

Mr. Bibekananda Sinha Ray

... for the respondent No.10

Affidavit of service filed by the petitioner is taken on record.

The petitioner seeks implementation of the order dated October 8, 2021 passed by the Revenue Officer under Section 49(2) of the West Bengal Land Reforms Act, who is also the Sub-Divisional Officer, Jhargram Sadar.

The contention of the petitioner is that the construction by the respondent no.10 on plot no.1198/2938 was without any sanction and ought to be demolished in terms of the order dated October 8, 2021.

Learned advocate for the respondent no.10 has submitted that there was a tin shed structure on the land in question. The same was temporary in nature. Such structure was raised before 1973 and as such the provisions of West Bengal Panchayat Act, 1973 would not be applicable. Moreover, the structure was

not of cement. Hence, permission under Section 23(1) was not required.

It appears that there is a long standing dispute with regard to title of the property in question. The petitioner approached the learned Executive Magistrate by filing M.R. Case No.2125/2019. Prosecution under Section 107 of the Cr.P.C. was submitted in the said proceeding. The parties were directed to maintain peace. There was an apprehension of breach of peace and law and order problems, according to the police report. Such fact was reflected in the order impugned

By the said order, the Sub-Divisional Officer, Jhargram Sadar, directed the Pradhan, Ragra-II Gram Panchayat and the Block Development Officer, Sankrail Development Block to take necessary steps against the respondent no.10 in terms of the Section 23(1) and (6) of the West Bengal Panchayat Act, 1973. The procedure provided under Section 23(1) and Section 23(55) was not followed.

Initially, the petitioner approached this Court challenging the inaction on the part of the police authorities with regard to the disputed land in question.

A co-ordinate Bench refused to pass any order in favour of the petitioner, inter alia, on the ground that the matter related to a dispute over right, title

and enjoyment of the property in question and was not to be resolved by the police authorities.

It appears that the respondent no.10 filed a civil suit for declaration of right, title and interest as also for permanent injunction. The civil suit is pending before the civil court. The suit is being contested by the petitioner.

Having heard the learned advocates for the respective parties, this Court is of the view that Sub-Divisional Officer, Jhargram Sadar ought to have relegated the matter to the panchayat authorities (permission granting authority) first to determine as to whether there is prima facie evidence of any unauthorised construction or not. Then the law would follow its own course under the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

Thus, the writ petition is disposed of with liberty to the petitioner to approach the Ragra-II Gram Panchayat with his objection in respect of the construction of the respondent no.10. If such grievance is made, the same shall be disposed of 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 petitioner and the respondent No.10. An advance notice of the inspection shall be served upon the petitioner and the respondent Nos.10 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) A report of such inspection with the details shall be prepared along with a sketch map, indicating the extent and nature of unauthorized construction, if any. The report shall also indicate whether any new construction had been raised without any permission and also whether the existing construction was temporary in nature and made prior to the coming into effect of the building rules under the West Bengal Panchayat Act, 1973.
- c) Such report shall be handed over to the parties. The question of right, title, interest, possession etc. shall not be decided by the panchayat authorities. Such issues shall be decided in the pending civil suit. The issues to be decided would be whether the construction was in accordance with law and upon obtaining proper permission or the

same was a temporary nature and had been built prior to the coming into force of the building rules and did not require permission.

- d) A hearing shall be given to the petitioner and the respondent Nos.10. 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.
- e) 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 accordance with the relevant law.

Needless to mention, if any unauthorised construction is detected, necessary steps will be taken in accordance with law to demolish the structure.

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

However, there will be no order as to costs.

All the parties are directed to act on the basis of
server copy of this order.

(Shampa Sarkar, J.)