

M/L 534
31.01.2023
Court. No. 19
GB

W.P.A. 9183 of 2022

Attinul Haque
VS
The State of West Bengal & Ors.

Md. Jalaluddin

...for the Petitioner.

Mr. Bibek Joyti Basu,
Mr. Subrata Ghosh

...for the State.

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

The petitioner alleges that the respondent nos.8 to 12 have been raising a construction on Plot No.4633 of Mouza-Panchgram, without any sanction. According to the petitioner, the said plot has been recorded as a 'Rasta' and has been used as a road by the villagers since long.

The learned advocate for the respondent nos.8 to 12 submits that the Plot No.4633 of Mouza-panchgram has been recorded in the name of one Ashmath and classified as a 'Nala'. He denies the contention of the petitioner that the said plot has been used as a road.

It appears that a title suit is pending between the brother of the petitioner and the respondent nos.8 to 12.

The issue is whether a construction without any permission is going on over a public street or a village road within the control of the panchayat authority.

The writ petition is disposed of granting liberty to the petitioner to approach the Panchgram gram panchayat in accordance with law. If such approach is made, the

contentions of the petitioner shall be decided by adhering the following procedure:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos.8 and 12. An advance notice of inspection shall be served upon the petitioner, the respondent nos.8 and 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 or on any public street.
- e) A hearing shall be given to the petitioner and the respondent nos.8 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 or in terms of Section 25(2) in case the construction is found on a public street.

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 receipt of the representation of the petitioner.

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.)