

15.05.2023
Sl. No.15(DL)
srm

W.P.A. No. 9636 of 2023

Abdar Ali Sardar

Versus

The State of West Bengal & Ors.

Mr. Falguni Bandyopadhyay,
Ms. Riya Ballav

....for the Petitioner.

Mr. Jahar La De,
Mrs. Debarati Sen (Bose)

...for the State-respondents.

Mr. Kalyan Kumamr Bhattacharjee,
Ms. Sahina Khatun

...for the Respondent Nos.9 & 10.

The respondent Nos.11 and 12 have refused service.

The postal articles are taken on record. Refusal is good service and hence the matter is taken up in the absence of the said respondents. Affidavit-of-service is taken on record.

The petitioner contends that the respondent Nos.9 to 12 have raised certain constructions on a land recorded in the name of the Government of West Bengal. The said land allegedly serves as a passage to the petitioner's house.

The learned Advocate for the respondent Nos.9 and 10 submits that the said respondents have raised certain

temporary structures and permission from the panchayat authorities would not be required for such construction.

Reference is made to Rule 19 of the West Bengal Panchayat (Gram Panchayat Administrative) Rules, 2004. Admittedly, Rule 19 of the said Rules, 2004 provides that small temporary structures which do not have any brick or concrete walls, need not be constructed with permission from the gram panchayat. However, concrete structures which are constructed within a panchayat area requires permission in terms of Section 23 of the West Bengal Panchayat Act, 1973.

The allegation of the petitioner against the respondent Nos.9 and 10 of having constructed on a government land which had obstructed the egress and ingress to the petitioner's house, has to be made before the appropriate authority in terms of the provisions of West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 and rules framed thereunder. The concerned authority shall act and proceed in accordance with law upon giving an opportunity of hearing to all. Necessary steps shall be taken if any unauthorized occupation of government land is detected.

With regard to the allegation of constructions of a building by respondent Nos.11 and 12 on the same

government land, , the petitioner will approach the gram panchayat by filing a separate representation. The gram panchayat shall act and proceed in accordance with law and take necessary steps with regard to such construction under Section 23(5) of the West Bengal Panchayat Act, 1973. In case the allegation of the petitioner is found to be correct and it is found that the construction of the concrete structures by the respondent Nos.11 and 12 had been made without any permission, proceedings in terms of Section 23(5) of the West Bengal Panchayat Act, 1973 shall be initiated and concluded. Such proceeding for demolition of an unauthorized construction, cannot be treated as a proceeding for removal of encroachment. For removal of these encroachers from the government land again, the petitioner will have to apply under the provisions of West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962.

Liberty is granted to the petitioner to approach all the concerned authorities in accordance with the relevant applicable statutes.

The Court has not expressed any opinion on the merits of the allegations of the petitioner and the authorities concerned shall act and proceed in accordance with law and independently.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of
this order.

(Shampa Sarkar, J.)