

03.01.2023
Court No. 19
Item no.01
CP

W.P.A. No. 9943 of 2022

Nitai Biswas & ors.

Vs.

The State of West Bengal & Ors.

Mr. Partha Sarathi Bhattacharyya, Sr. Advocate
Mr. Raju Bhattacharyya

...for the petitioners.

Mr. Himadri Sikhar Chakraborty
Mr. A. Maity

....for the State.

Mr. Shamim-ul-Bari
Mr. Md. Hasanuz Zaman
Mr. Md. Zeeshanuz Zaman
Ms. K. Sutradhar

...for the respondent nos. 8 to 14.

The petitioners allege that the respondent nos. 8 to 14 have raised an illegal construction on parts of L.R. Dag Nos. 109, 110, 117, 193, 196 and 198 pertaining to L.R. Khatian No. 411, J.L. No. 107 of Mouza – Karunahati. According to the petitioners the said constructions are without permission and thus, unauthorized. The petitioners filed a written complaint before the Pradhan, Chandaneshwar – I Gram Panchayat and prayed for demolition of such illegal constructions. Allegation is that the panchayat authorities have failed and neglected to take steps in respect of the alleged illegal construction.

Mr. Bari, learned advocate appearing on behalf of the respondent nos. 8 to 14 denies the allegation and submits that the said constructions have been made in accordance with law.

As disputed questions of fact have arisen, this court is not inclined to decide the matter. The authority empowered by law to determine the questions of illegal construction and to take steps in respect thereof, must decide the issues raised in the writ petition and pass necessary orders. Follow up steps must also be taken by the authorities.

Accordingly, the writ petition is disposed of with a direction upon the Chandaneshwar – I Gram Panchayat to consider and dispose of the representation made by the petitioner no. 1 in accordance with law and independently. The following procedure shall be adopted while disposing of the matter:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent nos. 8 to 14. An advance notice of the inspection shall be served upon the petitioners and the respondent nos. 8 to 14 and 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 there may be reasons to believe that the construction was without permission and was continuing, the authorities may take interim measures by stopping such construction.
- c) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.
- d) Such report shall be handed over to the parties.
- e) A hearing shall be given to the petitioners and the respondent nos. 8 to 14. 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.

The court has not gone into the merits of the claims and counter claims of the parties 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.

The question of title, possession and boundary etc. shall not be decided by the panchayat authorities. The only question to be decided by the panchayat authorities would be whether the construction had been made in the absence of any permission or in deviation of the plan or in violation of the building rules and the relevant laws.

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.)