

07.02.2023
Court No. 19
Item No.09
CP

WPA No. 10593 of 2022

Kazi Wahedul Islam & anr.
Vs.
The State of West Bengal & Ors.

Mr. Koustav Bagchi
Mr. Debayan Ghosh
Ms. Priti Kar

....for the petitioners.

Mr. Raja Saha
Mr. S.P. Lahiri

....for the State.

Affidavit of service is taken on record.

The respondent no. 7 has refused service. The respondent no. 7 is not present before the court today. However, refusal is good service. In any event, as the court is not passing any mandatory direction but is directing the permission granting authority to act and proceed in accordance with law by disposing of the representation filed by the petitioners, the matter is taken up in the absence of the respondent no.7. The respondent no. 7 will be given every opportunity to represent his case before the authority and file necessary documents in defence of the alleged construction.

The petitioners allege that the respondent no. 7 has been raising a construction on L.R. Plot No. 362 under Mouza - Nagdaha without any permission from the permission granting authority. Further allegation

is that minimum space had not been maintained between the two constructions. The construction of brick walls of the respondent no. 7 had covered the window of the petitioner. Photographs in support of such allegations have been annexed. A representation was filed before the Majhipara Palashi Gram Panchayat on June 10, 2022. It is submitted by the petitioners that no action has been taken on the basis of such representation.

Mr. Lahiri, learned advocate for the State respondents, has obtained instructions from the Officer-in-Charge, Jetia Police Station. It appears that two proceedings under Section 144(2) had been initiated by the parties against each other. The police authorities conducted their enquiries and submitted their reports before the court.

However, the proceedings under Section 144(2) of the Cr.P.C. are not germane for decision of this writ petition. The report is taken on record.

The writ petition is disposed of with a direction upon the Majhipara Palashi Gram Panchayat to treat the writ petition as a representation and dispose of the same in accordance with law. While doing so, the authority shall adhere to the following procedure:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent no. 7.

An advance notice of the inspection shall be served upon the petitioners and the respondent no. 7 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 such 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 no.7. 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.

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

The decision shall be limited to the issue of unauthorized construction, i.e., whether the construction has been raised without any permission or in deviation of the permission/sanction. The disputes with regard to title and possession shall not be decided.

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.)