

Item No.26
17.05.2023
Court. No. 19
GB

WPA 11758 of 2023

Ashique Kabir
Vs
The State of West Bengal & Ors.

*Mr. Sounak Ghosh,
Ms. Toslima Khatun*

...for the Petitioner.

*Ms. Jayeet Sinha,
Mr. Sandip Mandal*

...for the State.

*Mr. Animesh Mukherjee,
Md. Ali Ahasan*

...for the Respondent Nos.6 to 11.

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

The writ petition is disposed of with a direction upon the Kholapota Gram Panchayat to consider the allegation of unauthorized construction. An information was given to the petitioner under the Right to Information Act stating that no plan had been sanctioned by the authority for construction by the respondent nos.6 to 11 on Plot No.610, 615 and 617 of Mouza-Maynali.

It is submitted by the learned Advocate for the respondent nos.6 to 11 that the said respondents had been given a 'patta' in respect of the Plot No.610 and permission to construct had been given both by the Kholapota Gram Panchayat and by the Basirhat-II panchayat samiti in respect of plot Nos. 615 and 617.

The Court is unable to understand how the construction could be sanctioned by both the authorities at the same time.

In any event, the panchayat authorities have already intimated the petitioner that no sanction had been given. Thus, the panchayat authorities shall act and proceed by adopting the following procedure:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos. 6 to 11. An advance notice of the inspection shall be served upon the 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 or in deviation of such 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 the 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.

- e) A hearing shall be given to the petitioner and the respondent nos.6 to 11. 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.
- 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.

It goes without saying that in case the authority finally comes to a conclusion that there has been unauthorized construction and the same should be either rectified or demolished, steps shall be taken for demolition thereof, strictly, in accordance with law.

While deciding the issue, the panchayat authorities shall also enquire from the Basirhat-II panchayat samiti whether any sanction had been granted by the said authority or not. If the said samiti intimates that such construction had been permitted, then the panchayat authority shall refer the entire matter to the samiti, for determination of the issue, otherwise the matter shall be decided by the panchayat authorities as per the manner stated hereinabove.

The court has not gone into the merits of the claims of the petitioners 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.

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 as well as on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)