

10.02.2023
Court No. 19
Item 555
CP

WPA No. 13057 of 2017
With
IA NO: CAN/1/2020(Old No:CAN/2583/2020)
(application not in the file)

Sk. Nazibar Rahaman
Vs.
The State of West Bengal & ors.

Mr. Gazi Faruque Hossain
Ms. Priyanka Mandal
...for the petitioner.

Ms. Sipra Mazumdar
Ms. P. Ghatak
....for the State.

Despite service, none appears on behalf of the respondent nos. 4, 5 and 7.

As the court is not inclined to pass any mandatory order as prayed for, but is relegating the matter before the authority empowered by law to decide the issue of unauthorized construction, the matter is taken up in the absence of the said respondents.

The petitioner alleges that the respondent no. 7 is raising an unauthorized construction over L.R. Plot No. 183 of Mouza – Kamgsaripur, which is classified as ‘sali’.

Under such circumstances, without going into the merits of the claim of the petitioner, the writ petition is disposed of with a direction upon the Gurap Gram Panchayat to treat the writ petition as a

representation and dispose of the same in accordance with law. While doing so, the following procedure shall be adopted:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no. 7. An advance notice of the inspection shall be served upon the petitioner 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 either without permission or conversion 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 petitioner 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 issues that shall be decided would be whether the alleged construction is without any conversion or sanction and/or permission from the authority or whether the same has been done in deviation from the sanction plan and in violation of the building rules. The other issues with regard to right, title and interest shall not be gone into.

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.

This order shall not have any impact on the pending civil suit.

Accordingly, the writ petition is disposed of.

With the disposal of the writ petition the connection application, if any, is also 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.)