

April 11, 2023
Sl. No.A 60
Court No.19
s.biswas

WPA 11761 of 2022

Rabiul Sk.
vs.
The State of West Bengal and others

Mr. Dilip Kumar Samanta,
Mr. Debopriya Samanta, Advocates
... for the petitioner
Mr. Manas Kundu,
Mr. Debabrata Mondal, Advocates
... for the State

Despite service, none appears on behalf of the respondent Nos.5, 7 and 8. As the Court is not inclined to pass any mandatory direction as prayed for but deems it fit to relegate the matter to the permission granting authority for a decision on the allegation of unauthorized construction, the writ petition is taken up in the absence of the respondent Nos.7 and 8.

The petitioner alleges that the respondent Nos.7 and 8 had started raising construction on Dag No.20, Mouza Gopinathpur, P.S. Islampur, Dist.-Murshidabad, without obtaining necessary sanction in the prescribed form from the Lochanpur Gram panchayat.

The writ petition is disposed of with a direction upon the Lochanpur Gram Panchayat to dispose of the representation of the petitioner's learned advocate (Annexure P/2) at page 25 of the writ petition.

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 nos.7 and 8. An advance notice of the inspection shall be served upon the petitioner and the respondent nos.7 and 8 and on 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 any sanction and was continuing, the authorities may take such 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 right, title, interest, possession and boundary dispute etc. shall not be decided by the panchayat authorities. The issues to be decided would be whether

the construction is in accordance with a sanctioned plan or in absence thereof.

- e) A hearing shall be given to the petitioner and the respondent nos.7 and 8. 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.

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

This order shall not be construed as a recognition of the Court of the petitioner's right, title and interest in respect of the plot in question. The

authority shall restrict their decision to the allegation of unauthorized construction.

Copy of the writ petition be served in the office of the Lochanpur Gram Panchayat along with a server copy 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 server copy of this order.

(Shampa Sarkar, J.)