

ML 77
13.04.2023
Court. No. 19
GB

WPA 12566 of 2022

Tripti Biswas
Vs
The State of West Bengal & Ors.

Mr. Susnigdho Bhattacharyya

...for the Petitioner.

*Mr. Himadri Sikher Chakraborty,
Mr. Parikshit Goswami*

...for the State.

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

Despite service, none appears on behalf of the respondent nos.10 and 11. As the Court is not inclined to pass any mandatory direction as prayed for by the petitioner but deems it fit to relegate the matter to the authority empowered by law to decide the issue of unauthorized constructions, the writ petition is taken up in the absence of the said respondents.

The police authorities have filed a report and it appears that steps have been taken in order to maintain peace and tranquillity. The report of the Block Development Officer filed by Mr. Chakraborty, learned advocate for the State respondents also indicates that the Pradhan had already directed the parties to appear for a decision in the matter. Both the reports are taken on record.

The petitioner alleges that the respondent nos.10 and 11 have made a construction on a panchayat road, without any permission.

It appears that the panchayat authorities have also asked the parties to attend a hearing with regard to the alleged construction.

The disputed questions which have arisen, cannot be decided in this writ petition. The Majhergram Gram Panchayat shall 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 nos.10 and 11. An advance notice of the inspection shall be served upon the petitioner and the respondent nos.10 and 11 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 plan or permission or on a panchayat road and was continuing, the authorities may take such interim measures by stopping such construction. The provisions of Section 23(1) of the West Bengal Panchayat Act mandates that construction without permission cannot be made. The provisions of Section 25(2) of the said Act empowers the gram panchayat to remove all constructions from a public street or a

road within the control and management of the gram panchayat.

- 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 issues to be decided would be whether the construction is in accordance with a plan or permission or not.
- e) A hearing shall be given to the petitioner and the respondent nos.10 and 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 Sections 23(1) and 25(2) of the West Bengal Panchayat Act, 1973.

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.

(Shampa Sarkar, J.)