

April 18, 2023  
Sl. No.A 85  
Court No.19  
s.biswas

WPA 12920 of 2022

*Sayed Mosaddok Hossen and others*  
*vs.*  
*The State of West Bengal and others*

Mr. Sanat Kr. Roy,  
Mr. Abhishek Banerjee, Advocates  
... for the petitioners  
Ms. Rupsha Chakraborty, Advocate  
... for the State

Affidavit of service filed by the petitioners is taken on record.

Despite service, none appears on behalf of the respondent Nos.4 to 6.

As the Court is not inclined to pass any mandatory direction for demolition, but deems it fit to relegate the matter to the permission granting authority for determination of the allegation of unauthorized construction, the writ petition is taken up in the absence of the respondent No.6.

The petitioner alleges that the respondent No.6 had raised a construction on Plot Nos.214 and 215 of Mouza Bijoyrampur, without obtaining necessary permission from the Chaitanyapur 3 No. Gram Panchayat.

It is further submitted that a partition suit is pending before the learned Civil Judge (Senior Division), Haldia in Title Suit No.141 of 2021. It is also submitted that there is a subsisting order of status quo.

The allegation of the petitioner with regard to the violation of the order of status quo shall be decided by the learned Civil Court. The other issue involved with regard to the right title and interest of the parties in respect of the said land is also a matter to be decided by the learned Civil Court.

However, the allegation of unauthorized construction has to be decided by the permission granting authority in terms of Section 23(5) of the West Bengal Panchayat Act, 1973.

The petitioner has already approached the Pradhan, Chaitanyapur 3 No. Gram Panchayat by filing a representation dated June 6, 2022. The Court directs the Chaitanyapur 3 No. Gram Panchayat to dispose of the said representation 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 petitioners and the respondent No.6. An advance notice of the inspection shall be served upon the petitioners and the respondent No.6 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 petitioners and the respondent No.6. 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 accordance with law.

If the Sub-Divisional Officer finds that the construction is unauthorized and deserves to be demolished, but the implementation of such order would not be possible due to a subsisting order of status quo, the petitioner will be at liberty to approach the learned Civil Court for necessary clarification, modification or vacation of the said order.

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 server copy of this order.

**(Shampa Sarkar, J.)**