

19.04.2023
Sl. No.123(ML)
srm

W.P.A. No. 15197 of 2022

Smt. Basanti Keora

Vs.

The State of West Bengal & Ors.

Mr. Uttam Banerjee,
Mr. Arunesh Pathak,
Mr. Aniruddha Singha Roy

....for the Petitioner.

Mrs. Debarati Sen (Bose)

...for the State-respondents.

Despite service, none appears on behalf of the respondent Nos.6, 7 and 10 to 12. Affidavit-of-service is taken on record.

The Court is not inclined to pass mandatory directions as prayed for, but deems it fit to send back the matter before the competent authority, for necessary steps. Thus, the writ petition is taken up in the absence of the respondent Nos.10 and 12, who will be given adequate opportunity of hearing by the said authority.

The petitioner alleges that the respondent Nos.10 to 12 have raised a construction on LR Dag No.695, J.L. No.151 of mouza Purba Bishnupur within the jurisdiction of Durba Gram Panchayat, Nadia, without any sanction

from the Purba Ramnagar Gram Panchayat and in violation of the building rules.

The petitioner further alleges encroachment on his land. Neither the writ court nor the panchayat authorities can adjudicate the issue of encroachment. All that the panchayat authorities are entitled to determine is whether any construction has been made by the respondent Nos.10 to 12 without following the procedure laid down in Section 23 of the West Bengal Panchayat Act, 1973 and the rules framed thereunder.

However, the petitioner is granted liberty to approach the panchayat authorities by filing a representation indicating the alleged illegalities in the construction of the respondent Nos.10 to 12. If such representation is filed, the same shall be disposed of in accordance with law by the Purba Ramnagar Gram Panchayat, Hooghly by adhering to the following procedure:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent Nos.10 to 12, with 48 hours advance notice to the petitioner and the respondent Nos.10 to 12.

- b) A report of the inspection shall be prepared along with the sketch map, indicating the extent of unauthorized construction, if any.
- c) Such report shall be handed over to the petitioner as also the respondent Nos.10 to 12.
- d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission as also in violation of the building rules and had been continuing, the authorities may take interim measures by stopping such construction.
- e) A hearing shall be given to all the parties. 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.
- 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 the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

The questions of right, title, interest, encroachment, etc. shall not be gone into.

The Court has not gone into the merits of the claims of the petitioner and the issues raised, shall be decided by the competent authority, independently.

A copy of the writ petition along with a server copy of this order be served upon the Secretary, Purba Ramnagar Gram Panchayat, Hooghly.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)