

ML 138
25.04.2023
Court. No. 19
GB

WPA 15890 of 2022

Abhijit Dutta
Vs
The State of West Bengal & Ors.

*Mr. Shaunak Ghosh,
Mr. Anindya Sundar Das*

...for the Petitioner.

*Ms. Sima Adhikari,
Ms. Kakali Naskar*

...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.3, 7 and 8. 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 petitioner alleges that the respondent nos.7 and 8 constructed shop rooms, without obtaining any permission from the Simlagarh Vitasin Gram Panchayat. The said respondents carry on their respective businesses in the names and style of 'Byapari Shoe House', 'Sri Krishna Bhandar' and 'Sri Krishna Bastralaya'.

The petitioner approached the panchayat authorities by filing a representation which is Annnexure-P/3 at Page-14 of the writ petition. The writ petition is disposed of with a direction upon the Simlagarh Vitasin Gram Panchayat to

consider the representation of the petitioner 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.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 permission but was continuing, the authorities may take 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 title, possession and boundary dispute etc. shall not be decided by the panchayat authorities. The questions to be decided by the panchayat authorities would be whether the construction has been made without any permission or in violation of the building rules.

- 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.

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.)