

April 25, 2023
Sl. No.A 144
Court No.19
s.biswas

WPA 16009 of 2022

Tabarak Hossain Mallick and others
vs.
The State of West Bengal and others

Mr. Mahammad Mahmud, Advocate
... for the petitioner
Mr. Jahar Dutta,
Mr. Bipin Ghosh, Advocates
... for the State
Mr. Sudip Sarkar, Advocate
... for the respondent nos.6 & 7
Mr. P. K. Banerjee,
Mr. Indranil Nandi, Advocates
... for the respondent no.8

The petitioners allege that the respondent nos.6 to 8 had started raising construction on an adjacent plot, without leaving adequate side space from the 'pirottar' property situated at L.R. Plot No.663, in Mouza Chitrashali.

Such disputed question of fact cannot be decided. It is alleged that the respondents have raised such construction without following the building rules and without leaving the mandatory side space as prescribed thereunder.

Learned counsel for the respondent Nos.6 to 8 denies such allegation and submits that constructions have been raised on their respective plots and in terms of the sanction granted by the panchyat authorities.

The writ petition is disposed of with a direction upon the concerned gram panchayat to consider the

petitioner's representation, which is Annexure P/3 at page no.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.6 to 8. An advance notice of the inspection shall be served upon the petitioner and the respondent Nos.6 to 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 issue to be decided would be whether the alleged construction was without any sanction or in deviation from such sanction or contrary to the Rules.

- e) A hearing shall be given to the petitioner and the respondent Nos.6 to 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 entire exercise shall be completed within a period of four months from the date of communication of this order.

The Court has not gone into the merits of the allegation levelled against the respondents.

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.)