

April 25, 2023
Sl. No.A 169
Court No.19
s.biswas

WPA 16591 of 2022
Jamuna Jana and others
vs.
The State of West Bengal and others

Mr. Sayan Sinha,
Mr. Rishabh Dutta Gupta,
Mr. Adil Naser,
Mr. Soham Kumar, Advocates
... for the petitioners
Mr. Manas Kundu,
Mr. Mansur Alam, Advocates
... for the State

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

Despite service, none appears on behalf of the respondent Nos.3 to 5 and 7 to 10.

The petitioners allege that the respondent Nos.7 to 10 have raised construction at Dag Nos.883, 889, 890 and 901 corresponding to Khatian no.723, J.L. No.42 within Mouza-Boluhati, without any permission from the Narna Gram Panchayat.

Learned Counsel for the State respondents submits that a partition suit is pending between the parties, being Title Suit No.246 of 2019. The learned Civil Court (Senior Division), 1st Court, Howrah had passed an interim order of status quo. The petitioners are aggrieved by the violation of the order of status quo and the remedy of the petitioners would be before the learned Civil Court.

The Court agrees that the allegation of violation of the order of status quo must be adjudicated by the

learned Civil Court. However, the issue of unauthorized construction has to be dealt with in terms of Section 23(5) of the West Bengal Panchyat Act, 1973 and the rules framed thereunder.

The petitioners have alleged that the construction of the respondent Nos.7 to 10 is without permission. The petitioners had already approached the Pradhan, Narna Gram Panchayat by filing a representation dated July 8, 2022, which is annexed as Annexure P/3 at page 44 of the writ petition.

The writ petition is disposed of with a direction upon the gram panchayat to consider the petitioners' representation.

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 Nos.7 to 10. An advance notice of the inspection shall be served upon the petitioner and the respondent Nos.7 to 10 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 only 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.7 to 10. 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.)