

April 25, 2023
Sl. No.12
Court No.19
s.biswas

WPA 16599 of 2022

Masura Begam

vs.

The State of West Bengal and others

Mr. Debasish Das, Advocate

... for the petitioner

Mr. Bibek Jyoti Basu,

Mr. Uttam Kr. De,

Ms. Ankita Mukherjee, Advocates

... for the State

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

Despite service, none appears on behalf of the respondent No.3, 6 and 8.

As the Court is not inclined to pass any mandatory direction as prayed for, 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 Nos.3, 6 and 8.

The petitioner alleges that the respondent No.8 raised a construction on L.R. Plot No.2770, Mouza-Benai, without permission from the panchayat authorities. Further allegation is that mandatory space, as required by law, had not been maintained while raising such construction.

Mr. Basu, learned advocate appearing for the State, submits that a partition suit is pending before the civil Court. According to Mr. Basu, when the construction was being raised on an undivided

property, a boundary dispute could not be raised in this proceeding.

The writ petition is disposed of with a direction upon the Pradhan, Benai 6 No. Gram Panchayat, to consider the writ petition of the petitioner as a representation 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 No.8. An advance notice of the inspection shall be served upon the petitioner and the respondent No.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 only issue to be decided would be whether the alleged construction is 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 No.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.)