

25.04.2023
Court No. 19
Item 173
CP

W.P.A. No. 16803 of 2022

Sri Gopal Adak

Vs.

The State of West Bengal & Ors.

Mr. Kajal Ray

....for the petitioner.

Mrs. Rupsha Chakraborty

....for the State.

Mr. Debabrata Karan

...for the respondent nos. 7 & 8.

Mr. Surendra Kumar Sharma

....for the respondent no. 3.

The petitioner alleges that the respondent nos. 7 & 8 had raised a construction on L.R. Plot No. 16, corresponding to Khatian No. 130 of Mouza – Raghunathpur, by encroaching the petitioner's land. The petitioner submits that the right, title and interest of the petitioner had been decreed by a learned civil court.

The question of right, title and interest and the alleged encroachment of the said land, can neither be decided by this court nor by the panchayat authorities. The question is whether the construction on the said plot had been sanctioned or not.

Learned advocate for the respondent nos. 7 & 8, submits that a temporary structure with minor concrete constructions have been raised and the said construction should be exempted from the provisions of Section 23 of the West Bengal Panchayat Act, 1973.

The panchayat authorities submit that the records in the office of the gram panchayat did not reveal that any construction had been permitted on the disputed plot.

As the nature of the construction and the size thereof are not clear, the court is of the opinion that the matter has to be further enquired into by the panchayat authorities.

The writ petition is disposed of with a direction upon the Mirzapur Bankipur Gram Panchayat to dispose of the representation of the petitioner dated June 27, 2022, which is Annexure P-3 at page 35 of the writ petition. While doing so, the authorities will follow the procedure stated hereinbelow:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos. 7 & 8. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 7 & 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 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.
- e) A hearing shall be given to the petitioner and the respondent nos. 7 & 8. 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. 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.

The court has not gone into the merits of the claims.

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

The disputes with regard to title, possession and boundary etc., shall not be decided by the panchayat authorities.

This order shall not be construed as a direction of the court for removal of the physical possession of the respondent nos. 7 & 8 from the suit land, as such order cannot be passed by this court.

The report of the police authorities is taken on record.

A copy of the writ petition along with a server copy of this order be served upon the concerned gram panchayat for necessary compliance 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.)