

May 2, 2023
Sl. No.4
Court No.19
s.biswas

WPA 16977 of 2022

Jharna Biswas and others

vs.

The State of West Bengal and others

Mr. Pinaki Dhole

... for the petitioners

Mr. Himadri Sikhar Chakraborty

Ms. Susnita Saha

... for the State

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

Despite service, none appears on behalf of the respondent nos.8 and 10 to 13.

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.8 and 10 to 13.

It appears that the respondent no.9 has expired. Learned advocate for the petitioners submits that in the absence of the names of the heirs and legal representatives of the said respondent, it would not be possible for the petitioner to file a substitution application in order to bring on record the heirs of the deceased respondent.

Learned advocate for the writ petitioners further submits that the writ petitioners may proceed

against the other respondents and the same shall abate against the respondent no.9.

Hence the writ petition is taken up for hearing.

The order passed herein shall not apply to the alleged construction of the respondent no.9.

The petitioners allege that that the respondent nos.8 and 10 to 13 have raised some constructions on a land which has been classified as 'sali'. According to the petitioners, the said respondents did not take any permission from the permission granting authority.

The Court is of the view that a single representation clubbing together constructions of more than five persons, cannot be entertained by the panchayat authorities. The petitioner is at liberty to apply before the panchayat authorities as also the competent authority under the West Bengal Land Reforms Act, 1955, with his grievance of illegal conversion of land and illegal construction on a 'sali' land.

If separate representations are filed before the respective authorities, pointing out the illegalities in the alleged construction of each of the respondents, the respective authorities shall take steps in accordance with law. The permission granting authority i.e. Akaipur Gram Panchayat shall

consider the grievances of the petitioners in respect of the objections, which the petitioners will file.

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.8 and 10 to 13. An advance notice of the inspection shall be served upon the petitioners and the respondent Nos.8 and 10 to 13 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 issues to be decided would be whether the construction was in accordance with a sanctioned plan or in absence thereof.

- e) A hearing shall be given to the petitioners and the respondent Nos.8 and 10 to 13. 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. It goes without saying, that in case any unauthorized construction is found, steps for demolition will be taken in accordance with law.

The entire exercise shall be completed within a period of four months from the date of the receipt of the objections of the petitioners.

The police authorities have filed a report. It appears that a complaint had been filed by the

petitioners against some of the respondents. An investigation had been initiated, which resulted in the filing of a charge-sheet.

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.)