

May 2, 2023
Sl. No.A 79
Court No.19
s.biswas

WPA 17904 of 2022

Jadabendra Dutta

vs.

The State of West Bengal and others

Mr. Timir Baran Saha

... for the petitioner

Mr. Souri Ghosal

Mr. Prabhat Kr. Singh

... for the respondent nos.5 & 6

The petitioner alleges that the respondent nos.5 and 6 started raising a new construction on plot nos.298 of Mouza-Bongpur, without any permission from the panchayat authorities.

Learned advocate for the respondent nos.5 and 6 denies such allegation and submits that the petitioner does not have the right, title and interest in respect of the land in question. The land belongs to the respondent nos.5 and 6 and the said respondents had been occupying the land since long and much before the West Bengal Panchayat Act, 1973 had come into force. No new construction had taken place. The existing constructions were also age old. Thus, some repairs had been carried out.

The dispute with regard to right, title, possession and enjoyment of the land in question, can neither be adjudicated by this Court nor determined by the panchayat authorities.

The issue which has to be decided by the gram panchayat is, whether the respondent nos.5 and 6 had started raising any new construction, without

taking permission from the panchayat authorities or had only repaired a 60 years old construction.

With the above observation, the writ petition is disposed of, directing the Belkash Gram Panchayat to treat the writ petition as representation of the petitioner and dispose of the same.

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.5 and 6. An advance notice of the inspection shall be served upon the petitioner and the respondent Nos.5 and 6 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. Age of the construction shall also be determined as it is the specific case of the respondent Nos.5 and 6 that the construction was preexisting and had been erected much before the West Bengal Panchayat Act, 1973 had come into force.
- b) In case, it is found on preliminary inspection that there may be reasons to believe that a new construction was being raised, 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 petitioner and the respondent Nos.5 and 6. 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 communication of the 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 server copy of this order.

(Shampa Sarkar, J.)