

02.05.2023
Sl. No.83(ML)
srm

W.P.A. No. 17982 of 2022
Gokul Chandra Nandi & Anr.
Versus
The State of West Bengal & Ors.

Mr. Priyabrata Batabyal,
Ms. Suchana Banerjee

....for the Petitioners.

Ms. Sima Adhikari,
Ms. Kakali Naskar

...for the State-respondents.

Mr. Somnath Roy

...for the Respondent Nos.6(a), 6(b) & 7.

Despite service, none appears on behalf of the panchayat authorities. Affidavit-of-service is taken on record.

It is contended by the learned Advocate for the respondent No.7 and the heirs of the respondent No.6 that the respondent No.6 passed away much before the writ petition was filed.

Hence, instead of prolonging the matter by directing substitution, this Court deems it fit to add heirs and legal representatives of respondent No.6 as the respondent Nos.6(a) and 6(b).

Let Joydeep Ghosh and Prosenjit Ghosh, both sons of Tapan Ghosh, be added as respondents and cause title of the writ petition be corrected, here and now.

The petitioners' contention that the predecessor-in-interest of the added respondent Nos.6(a) and 6(b) and the respondent No.7 had encroached a portion of the land belonging to the petitioners, cannot be entertained by this Court.

The other contention of the petitioners that the panchayat authorities should be directed to demarcate the land belonging to the petitioners so that the extent of encroachment can be ascertained, also cannot be entertained by this Court.

The only issue that can be looked into by this Court and by the panchayat authorities is the allegation made in paragraph 5 of page 4 of the writ petition to the extent that the construction of the residential house of the added respondent Nos.6(a) and 6(b) and the respondent No.7 was beyond the sanctioned plan and in deviation thereof.

Under such circumstances, the writ petitioners are granted liberty to file an objection restricting their allegation to the aspect of alleged deviation from the sanctioned plan and violation of the rules. If such

representation is filed, the same shall be disposed of, in accordance with law.

While doing so, the permission granting authority shall adhere to the following procedure:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent Nos.6(a), 6(b) and 7, with 48 hours advance notice to the petitioners and the added respondent Nos.6(a), 6(b) and 7.
- b) A report of the inspection shall be prepared along with the sketch map, indicating the extent of unauthorized construction, if any.
- c) Such report shall be handed over to the petitioners as also the added respondent Nos.6(a), 6(b) and No.7.
- d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission as also in violation of the building rules and had been continuing, the authorities may take interim measures by stopping such construction.
- e) A hearing shall be given to all the parties. 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.

- 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 the provisions 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 receipt of the petitioners' representation.

The questions of right, title, interest, encroachment, etc. shall not be gone into.

The Court has not gone into the merits of the claims and counter-claims of the parties and the issues raised, shall be decided by the competent authority, independently.

A copy of the writ petition, along with a server copy of this order be served upon the Secretary, Amnan Gram Panchayat, Hooghly.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of
this order.

(Shampa Sarkar, J.)