

ML 97
02.05.2023
Court. No. 19
GB

WPA 18445 of 2022

Sri Saktipada Sardar & Anr.
Vs
The State of West Bengal & Ors.

Mr. Anindya Chakraborty

...for the Petitioners.

*Mr. Rama Prasad Sarkar,
Ms. Debarati Sen Bose*

...for the State.

*Md. Shahjahan Hossain,
Ms. Sanjida Sultana,
Mr. Prithwiraj Biswas*

...for the Respondent No.6.

Affidavit-of-service filed in Court today, be kept with the record.

The petitioners allege that the respondent no.6 has raised a construction on Plot No.101 and on the common passage adjacent to the said plot in Mouza-Chakrajummolla, by illegally filling up a pond and without any permission from the panchayat authorities.

The learned advocate for the respondent no.6 denies such allegation and submits that the petitioner also had covered up a major portion of the pond while making his own construction. Further submission is that an extension of a verandah had been made, but there was no obstruction on any common passage.

The police report also indicates that there is a dispute with regard to the enjoyment of the lands in question and demarcation of the same, between the two brothers.

The writ petition is disposed of with a direction upon the Rasapunja Gram Panchayat to dispose of the representation of the petitioner, which is Annexure-P/4 at Page 29 of the writ petition.

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 no.6. An advance notice of the inspection shall be served upon the petitioners and the respondent no.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.
- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without any sanction and/or 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. The question of title, possession and boundary dispute etc. shall not be decided by the authorities. The questions to be decided would be whether any construction had been raised without conversion

and without permission, on Plot No.101, on the adjacent areas and over an alleged common passage.

- e) A hearing shall be given to the petitioners and the respondent no.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.

The court has not gone into the merits of the claims of the petitioner and the issues involved shall be decided independently.

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