

10.05.2023  
Court No. 19  
Item 08  
CP

WPA No. 18560 of 2022

Riajul Sk.

Vs

The State of West Bengal & Ors.

Mr. Kingsuk Mondal

Mr. Golam Nure Imrohi

... for the Petitioner.

Mr. Partha Pratim Roy

Mr. Sarbababda Sanyal

Ms. Poulami Chakraborty

....for the respondent nos. 8 to 12.

The petitioner alleges unauthorized construction by the respondent Nos. 8 to 12.

Upon perusing the plaint and the written statement which has been filed by the learned advocate for the petitioner, it appears that Title Suit No. 101 of 2020 pending before the leaned Civil Judge (Junior Division), Lalbagh, is a suit for declaration of title, recovery of possession and for permanent injunction. On the prayer of the plaintiffs in the suit, the defendants have been enjoined from raising any construction on the property in question.

The petitioner submits that the issue of construction without any sanction cannot be decided in the suit. Special reference is made to the averments in the plaint to the effect that the petitioner contended that the respondent nos. 8 to 12 had started raising a new construction on the said

plot, even after the licence had been revoked. Thus, the petitioner submits that apart from the existing old structure which had been built prior to the promulgation of the West Bengal Panchayat Act, 1973, new constructions had been raised or attempted to be raised without any permission from the panchayat authorities.

Learned advocate for the respondent nos. 8 to 12 submits that after the order of injunction had been passed restraining the respondents from raising any construction, the said respondents have not continued with any construction. He further submits that the said respondents did not ever raise any new construction but tried to renovate and repair the dilapidated structure. According to him, repairing a structure did not require sanction.

The disputed questions of fact which have arisen, cannot be decided in this proceeding. The petitioner has already approached the panchayat authorities by filing an objection which is Annexure P-5 at page 26 of the writ petition. The said representation shall be disposed of by the Lochanpur Gram Panchayat, in accordance with law.

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. 8 to 12. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 8 to 12 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. The age of the construction shall be determined in order to ascertain whether the alleged construction was in the nature of a repair of the existing construction or any new addition, alteration, reconstruction, change to the existing covered area, height and/or external elevation of the existing structure, had been made.

- d) Such report shall be handed over to the parties.
- e) A hearing shall be given to the petitioner and the respondent nos. 8 to 12. 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.
- g) Needless to mention, the competent authority will demolish the structure if any unauthorized construction is detected, after the entire process is over.

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.

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.)**