

08.02.2023
Sl. No.26(DL)
srm

W.P.A. No. 17165 of 2019
Anirban Mondal
Versus
State of West Bengal & Ors.

Mr. Sabyasachi Chatterjee,
Mr. Pintu Karan,
Mr. Sandipan Dan,
Mr. Badrul Karan

....for the Petitioner.

Mr. S. Ghosh,
Mr. Kapil Chandra Sahoo

...for the Respondent No.6.

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

The petitioner has challenged a construction raised by the respondent No.6 on Dag No.7876 of mouza Madarat allegedly, without any permission and without leaving any side space as per the building rules. According to the petitioner, the alleged construction is now on a public road.

Mr. Ghosh, learned Advocate for the respondent No.6 denies such contention. It is submitted that the construction has been existing since 1969 and at the relevant point of time, no permission from the authority

was required. The respondent No.6 repaired a portion of the wall, which was dilapidated and such repair did not require permission from the panchayat authorities. Reference is made to Rule 19(2) of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004. According to Mr. Ghosh, unless the repairing work resulted in structural changes or changed the existing covered area of the house, permission for such repair from the authority, would not be required.

Mr. Chatterjee, learned Advocate for the petitioner submits that under the garb of repairing, rampant construction was going on and the area originally covered by the construction of 1969 had been extended up to the lane used by the public.

These disputed questions of fact cannot be entered into by the writ Court. The permission granting authority is empowered under Section 23 of the West Bengal Panchayat Act, 1973 to take appropriate steps, if any complaint is received with regard to the unauthorised construction. In this case, the petitioner has already approached the Madarat Gram Panchayat, District-South 24-Parganas, by filing a representation dated May 7, 2018 being annexure P-4 at page 25 to the writ petition.

Under such circumstances, the writ petition is disposed of with a direction upon the Madarat Gram Panchayat, District-South 24-Parganas, to dispose of the representation of the petitioner dated May 7, 2018 being annexure P-4 at page 25 to the writ petition, in accordance with law. While doing so, the gram panchayat shall adhere to the following procedure:-

- a) Inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent No.6, with 48 hours advance notice to the petitioner and the respondent No.6.
- b) Report of the inspection shall be prepared along with a sketch map indicating whether any new construction had been raised or only repairs were made. Whether the exemption under Rule 19(2) of the Administration Rules, 2004 would be permissible in this case shall be noted. Whether the side space had been maintained shall also be seen.
- c) Such report shall be handed over to the petitioner as also the respondent No.6.
- d) In case, it is found on preliminary inspection that there may be reasons to believe that the constructions were not in the nature of repair, 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 in respect of the alleged construction. 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 communication of this order.

The Court has not gone into the merits of the claim and counterclaim of the parties and the issues raised shall be decided by the competent authority.

The question of title, possession, encroachment, etc. shall not be gone into.

A copy of the writ petition along with a server copy of this order be served upon the Secretary, Madarat Gram Panchayat, District-South 24-Parganas.

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.)