

ML 115
03.05.2023
Court. No. 19
GB

WPA 19014 of 2022

Mosaffar Ali Mallick
Vs
The State of West Bengal & Ors.

Mr. Keshab Chandra Das,
Ms. Aparajita Mondal,
Mr. Biplab Adak

...for the Petitioner.

Mrs. Jhuma Chakraborty,
Mr. Aritra Ghosh

...for the State.

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

Despite service, none appears on behalf of the respondent nos.5 to 11. As the Court is not inclined to pass any mandatory direction as prayed for by the petitioner, the writ petition is taken up in the absence of the said respondents.

The writ petition is not maintainable as it appears that the petitioner has raised a question of encroachment by the respondent no.9. The representation filed by the petitioner deals with a request before the concerned gram panchayat to cause a demarcation of an undivided property, so that the construction which has been allegedly made by encroaching the portion of the petitioner can be identified and removed.

This Court is neither equipped nor empowered to consider the allegation of encroachment and direct the panchayat authorities to demarcate the respective portions of the co-sharers. The remedy of the petitioner would be to file

a suit for partition. However, the other contention of the petitioner that the construction is without any permission from the concerned gram panchayat is neither pleaded nor supported by any documents. Hence, such question can only be decided by the gram panchayat once the petitioner approaches before the gram panchayat by filing a proper representation.

If any representation is filed pointing out any alleged illegality in the construction or violation of building rules, the gram panchayat shall dispose of the said representation in accordance with law.

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 no.9. An advance notice of the inspection shall be served upon the petitioner and the respondent no.9 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 but was continuing, the authorities may take 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 panchayat authorities. The questions to be decided by the panchayat authorities would be whether the construction has been made without any permission or in violation of the building rules.
- e) A hearing shall be given to the petitioner and the respondent no.9. 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 receipt of petitioner's representation.

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.)