

ML 127
15.05.2023
Court. No. 19
GB

WPA 19659 of 2022

Rita Mukherjee
Vs
The State of West Bengal & Ors.

*Mr. Amar Nath Sen,
Mr. Amit Bikram Mahata*

...for the Petitioner.

*Mr. Naba Kr. Das,
Mr. Subhabrata Das*

...for the State.

Despite service, none appears on behalf of the respondent nos.2 and 7. As this Court is not inclined to pass any mandatory directions but deems it fit to relegate the matter to the authority empowered by law to decide the issue of unauthorized constructions, the matter is taken up in the absence of the said respondents.

The petitioner alleges that the respondent no.7 started raising a construction just adjacent to Plot no.64, without leaving any mandatory space between such construction and the petitioner's boundary wall. The petitioner alleges violation of the building rules.

The writ petition is disposed of with a direction upon the Chhatna-II Gram Panchayat to dispose of the representation of the petitioner in accordance with law. It appears that the petitioner's representation was received by the Pradhan on July 24, 2022 which is Annexure-P/4 at Page-22 of the writ petition.

While disposing of the representation, 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.7. An advance notice of the inspection shall be served upon the 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 or in deviation of such permission and 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 and without maintaining the minimum space.
- e) A hearing shall be given to the petitioner and the respondent no.7. 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 accordance with law.

It goes without saying that if the authority finally comes to a conclusion that there has been unauthorized construction and the same should be either rectified or demolished, steps shall be taken for demolition thereof, strictly in accordance with law.

The court has not gone into the merits of the claims of the petitioners and the issues raised 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.)