

04.01.2023
Court No. 19
Item no.72 (ML)
CP

WPA No. 17614 of 2016

Amar Chand Mahato @ Amir Chand Mahato & ors.
Vs.
The State of West Bengal & Ors.

Mr. Shibasis Chatterjee

....for the petitioners.

Affidavit of service is taken on record.

Despite service, none appears on behalf of the
respondent nos. 6 and 7.

As the court is not inclined to pass any
mandatory order as prayed for, but is relegating the
matter before the authority empowered by law to
decide the issue of unauthorized construction, the
matter is taken up in their absence.

The petitioners allege that the respondent nos.
6 and 7 have constructed a thatched structure on
Plot No. 64 of Mouza – Talgachi corresponding to
Khatian Nos. 3003, 3004, 3006, 3007 and 3008.
According to the petitioners the said land has been
classified as 'Ayus'.

The allegations are three-fold. First, the
construction has been made on the petitioners' land.
Secondly, the construction is without permission and
thirdly, the construction has been made without
conversion of the land to 'Bastu'.

This court is not inclined to decide the merits of the claim of the petitioners in the absence of the respondents. However, as there are allegations of unauthorized construction, this court is of the view that the matter should be disposed of by the panchayat authorities in accordance with law.

The issues to be decided would be whether the nature of the construction required permission from the authorities. Whether such construction had been made without any permission and without conversion of the land to 'Bastu'.

While deciding the issues the representation of the petitioners dated July 18, 2016 shall be disposed of by the Muraguar No. III Gram Panchayat, 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 petitioners and the respondent nos. 6 and 7. An advance notice of the inspection shall be served upon the petitioners and the respondent nos. 6 and 7 and 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 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.
- e) A hearing shall be given to the petitioners and the respondent nos. 6 and 7. 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.

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.

The question of 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.)