

02.01.2023
Sl. No.19(ML)
srm

W.P.A. No. 25631 of 2022
Sorifuddin Molla
Vs.
The State of West Bengal & ors.

Mr. Santanu Maji,
Mr. Subhayu Das
....for the Petitioner.

Mr. Rama Prasad Sarkar,
Mrs. Debarati Sen Bose
...for the State-respondents.

Mr. Upendra Roy,
Mr. Kanchan Roy,
Mr. Tamal Singha
.....for the Respondent Nos.8 & 9.

The petitioner has alleged that the respondent Nos.8 and 9 have raised an unauthorised construction on LR Dag Nos.364 and 365 pertaining to Khatian No.3241 of mouza Uriapara, District-South 24-Parganas, without any conversion of the said land and without obtaining permission from the panchayat authorities.

On the last occasion, this Court had directed the learned Advocate for the respondent Nos.8 and 9 to produce the sanction granted by the Polerhat-II Gram Panchayat.

Today, a certificate issued by the Pradhan of Polerhat-II Gram Panchayat dated August 10, 2022 has been produced, which indicates that the Pradhan did not have any objection if the said respondents constructed a residential house along the pond over an area of 4 decimals of land.

The learned Advocate for the respondent Nos.8 and 9 submits that the petitioner did not have any right, title and interest over the land on which the construction was permitted by the Pradhan and as such the Court should not entertain the writ petition.

Mr. Sarkar, learned Advocate for the State-respondents submits that the signature of the petitioner in the representation filed before the gram panchayat does not tally with the signature of the petitioner in the writ petition.

The Panchayat Act provides that construction over any land must be made with due permission from the gram panchayat. Reference is made to Section 23 of the West Bengal Panchayat Act, 1973 as also Rules 26 and 27 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004.

No construction can be permitted without permission from the appropriate permission granting

authority, namely, the gram panchayat and upon obtaining conversion of the land to '*bastu*'.

In this case, admittedly the gram panchayat did not accord any permission. It does not appear that the petitioner applied for permission in the prescribed form. No conversion certificate has been produced. The Pradhan did not have any authority under the law to grant a 'no objection' in respect of such construction.

As such, the writ petition is disposed of with a direction upon the Polerhat-II Gram Panchayat, District-South 24-Parganas, to treat the writ petition as the representation of the petitioner and take a decision in accordance with law. While doing so, the gram panchayat shall adhere to the following procedure:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent Nos.8 and 9, with 48 hours advance notice to the petitioner and the respondent Nos.8 and 9.
- b) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also the respondent Nos.8 and 9.

- d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without conversion of the land as also without permission and had been continuing, 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. 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 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 Pradhan, Polerhat-II 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.)