

S/L 2
09.01.2023
Court. No. 19
GB

W.P.A. 25685 of 2022

Hamida Bibi & Ors.
VS
The State of West Bengal & Ors.

Md. Sarwar Jahan.

...for the Petitioners.

*Mr. Narayan Ch. Bhattacharyya,
Ms. Sujata Ghosh.*

...for the State.

*Ms. Manjuli Chaudhuri,
Ms. Mekhla Sinha.*

...for the Respondent Nos.4 to 6.

Mr. Sanjib Seth.

...for the Respondent No.13.

Initially the writ petition was filed on the ground that the Howrah Zilla Parishad did not have any jurisdiction to pass the order of demolition. Upon consideration of Rule 28 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 and the bye-laws of the said Zilla Parishad, the Court holds that the Howrah Zilla Parishad had the jurisdiction to decide the issue of unauthorized construction. The respondent no.13 filed a representation in respect of the construction made by the petitioners. They alleged that the same was unauthorized.

The only issue to be determined now is whether the persons who have right, title and interest in respect of the construction were heard or not. Admittedly, some of the petitioners were heard but the others who have an interest in the property were not put on notice before the hearing.

The order of the District Engineer, Howrah Zilla Parishad dated March 23, 2022 is set aside only on the

ground of violation of the principles of natural justice. The petitioner nos.1, 7, 8 and 9 were not heard. The writ petition is disposed of with a direction upon the District Engineer, Howrah Zilla Parishad to hold a *de novo* proceeding in this case, in accordance with law.

While doing so, the following procedure shall be adopted:-

- a) An inspection of the construction shall be conducted. The date of inspection shall be notified to the petitioners as also the respondent no.13. This order shall serve as a notice to the petitioners 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 said premises. Such affixation shall amount to notice upon all.
- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was in deviation of the plan and the building rules or without permission, and had been continuing, the authorities may take such interim measures by stopping such construction.
- c) The report of such inspection shall be prepared along with a 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 right, title, possession and boundary dispute shall not be decided by the panchayat authorities.

- e) A hearing shall be given to the petitioners and the respondent no.13. 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 accordance with law.

The court has not gone into the merits of the claims of the petitioners and the issues involved shall be decided independently, upon hearing the parties.

The entire exercise shall be completed within a period of three 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.)