

02.01.2023
Court No. 19
Item no.25
CP

W.P.A. No. 25923 of 2022

Dibyendu Dash

Vs.

The State of West Bengal & Ors.

Mr. Dilip Kumar Samanta

Mr. Biswapriya Samanta

...for the petitioner.

Mr. Jahar Datta

Mr. Benazir Ahmed

....for the State.

Mr. Debnarayan Banerjee

Mr. Nilkantha Nayak

....for the respondent no. 9.

The petitioner alleges that the order of this court passed in WPA 9584 of 2020 dated March 26, 2021 had not been complied with by the Sautia Gram Panchayat No. 1. The petitioner has pointed out to a letter written by the Pradhan, Sautia Gram Panchayat to the learned advocate for the petitioner dated September 15, 2021. The said letter indicates that the Pradhan had disposed of the representation in favour of the petitioner, although there does not appear to be any reasoned order passed pursuant to the direction of the court.

Thus, this writ petition has been filed for a direction upon the concerned gram panchayat to take steps on the basis of the complaint lodged by the petitioner.

Learned advocate for the respondent no. 9 submits that permission to raise the construction had been granted by the concerned gram panchayat in respect of Plot Nos. 344, 345 and 346. Such permission was for construction of the ground and the first floor. The same was granted on July 9, 2019.

Under such circumstances, the allegation of Mr. Samanta, learned advocate for the petitioner, that the construction was without any permission from the gram panchayat, is not substantiated.

The other allegation with regard to encroachment over the petitioner's portion of land in Plot No. 345, shall be decided in the pending civil suit. Neither the writ court nor the panchayat authorities can decide the dispute either with regard to title or with regard to boundary.

The question which the panchayat authorities are empowered to decide, is whether the alleged construction of the respondent no. 9 had been made in accordance with the permission granted by the panchayat authorities and as per the building rules or not.

Without going into the merits of the claims of the respective parties, the writ petition is disposed of with a direction upon the Sautia Gram Panchayat No. 1, to treat the writ petition as a representation of

the petitioner and dispose of the same in accordance with law. The following procedure shall be adopted while disposing of the matter:

- 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 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 such interim measures by stopping such construction.
- c) The 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 petitioner and the respondent no. 9. 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 court has not gone into the merits of the allegations made by the petitioner. 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 only issue to be decided would be whether the construction is in accordance with the permission granted or not. If any deviation from such permission or violation of the building rules are detected, then steps shall be taken in accordance with law.

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.)