

02.01.2023
Court No. 19
Item no.26
CP

W.P.A. No. 25931 of 2022

Palash Mondal

Vs.

The State of West Bengal & Ors.

Mr. Sounak Bhattacharya

Mr. Sounak Mondal

...for the petitioner.

Mr. Himadri Sikhar Chakraborty

Mr. S. T. Mina

....for the State.

Ms. Monjuli Choudhury

Ms. Mekhla Sinha

...for the respondent nos. 2 & 3.

Mr. Pranab Kumar Paral

...for the respondent nos. 7, 8, 9 & 11.

Despite service, none appears on behalf of the respondent no. 10.

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 his absence.

The petitioner alleges that the respondent nos. 7 to 11 have raised a two storeyed building on L. R. Plot No. 1729 of Mouza – Makardaha, without any permission from the zilla parishad.

The learned advocate for the respondent nos. 7 to 11 denies the allegations and submits that only a

boundary wall had been constructed with permission from the Makardah No. 1 Gram Panchayat.

It is the specific contention of the petitioner that as the area falls within the Howrah Zilla Parishad, Rule 28 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 (hereinafter referred to as the 'said rules') would govern such construction.

The writ petition is disposed of with a direction upon the competent authority of the Howrah Zilla Parishad to treat the writ petition as a representation of the petitioner and dispose of the same in accordance with law and independently. 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 nos. 7 to 11. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 7 to 11 and the Pradhan of the concerned gram panchayat. 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 authority may take such interim measure, 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, the respondent nos. 7 to 11 as also the Pradhan Makardah No. 1 Gram Panchayat. 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 and 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. The only question to be decided by the zilla parishad, would be whether the construction has been made without any permission and/or in violation of the building rules and the relevant laws.

A copy of the writ petition along with a server copy of this order be served upon the Howrah Zilla Parishad 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.)