

S/L 27
02.01.2023
Court. No. 19
GB

W.P.A. 25996 of 2022

Sri Jayanta Panda & Anr.
VS
The State of West Bengal & Ors.

*Mr. Saibal Acharya,
Mr. Pradip Paul.*

...for the Petitioner.

*Mrs. Jhuma Chakraborty,
Mr. Aritra Ghosh.*

...for the State.

Mr. S.P. Pahari.

...for the Respondent No.8.

Affidavit-of-service filed in Court today, be kept with the record. The police report is also taken on record.

The petitioner alleges that the respondent no.8 was raising a construction without obtaining any permission and/or sanction from the Panchet No.4 gram panchayat. According to the petitioner, such construction was being made without proper demarcation of the boundaries of the said respondent. The allegation of encroachment over the land of the petitioner has also been made.

It appears that alleging such construction and encroachment, a civil suit has been filed. The same was registered as Title Suit No.313 of 2022 and is pending before the learned Civil Judge (Senior Division), 1st Court at Contai. It appears that the petitioner was also protected by an ad interim order of injunction restraining the respondent no.8 from raising such construction.

The learned advocate for the respondent no.8 has submitted a photocopy of the approved building plan which

was sanctioned by the Panchet No.4 gram panchayat. Such sanction was granted some time in June, 2022. The approval by the Pradhan does not bear any date.

The allegation of encroachment and the boundary dispute which has been raised by the petitioner, must be decided in the civil court.

Further, the allegation of construction in violation of the order of ad interim injunction shall also be decided by the civil court upon the petitioner filing an appropriate application in this regard.

As it appears that a permission had been granted by the authority concerned, the only order that can be passed in the writ petition is to direct the Panchet No.4 gram panchayat to ascertain whether the alleged construction so far made on the basis of the alleged permission, had been strictly in accordance with the building plan or whether there had been any deviation from the said plan or the building rules. Such decision shall be taken irrespective of the orders that may be passed by the civil court. 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 no.8. An advance notice of the inspection shall be served upon the petitioners and the respondent nos.8 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 in deviation of the plan and building rules 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 nos.8. 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. Once such reasoned order is passed and the allegation of unauthorized construction is established, the petitioners shall be at liberty to approach the civil court for modification and/or variation the order of status quo. Thereafter, the panchayat authorities shall proceed in accordance with law in respect of the

said unauthorized construction. 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, 1973.

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

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