

19.01.2023
Court No. 19
Item 849
CP

WPA No. 26458 of 2022

Sk. Rabiul Hoque
Vs.
The State of West Bengal & Ors.

Ms. Reshmi Ghosh
Mr. Soumya Sankar Chini
...for the petitioner.

Mr. Rabindra Narayan Dutta
Mr. Suprabhat Chattacharyya
...for the State.

Affidavit of service is taken on record.

Despite service, none appears on behalf of the
respondent nos. 2 to 6.

The subsequent affidavit of service affirmed by
the petitioner showing service of notice upon the
non-appearing respondents, is taken on record.

As the court is not inclined to pass any
mandatory order as prayed for, the matter is taken
up in the absence of the said respondents.

The petitioner alleges that the respondent nos.
5 and 6 had raised an unauthorized construction on
L.R. Dag No. 1273, in violation of the order passed by
the civil court in Title Suit No. 141 of 2017 and also
in violation of the provisions of Section 23 of the
West Bengal Panchayat Act, 1973.

According to the petitioner, the pradhan,
Kumarara Gram Panchayat intimated the petitioner

by way of a reply to the petitioner's query under the Right to Information Act, that no permission had been given by the Kumarara Gram Panchayat to the respondent nos. 5 and 6 for construction of a residential house. The writ petition has been filed for a direction upon the concerned panchayat authorities to take steps for demolition.

As the petitioner has not yet approached the competent authority for necessary action, no mandatory directions can be passed in the writ petition.

The petitioner is granted liberty to approach the Kumarara Gram Panchayat with his allegations in respect of the above-mentioned construction. If such representation is filed, the same shall be disposed of in accordance with law. While doing so, the authority shall adhere to the following procedure:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos. 5 and 6. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 5 and 6 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 nos. 5 and 6. 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.

g) If the authority under Section 23(5) comes to a conclusion that the construction should be demolished, but the order of the civil court stands in the way, the petitioner shall be at liberty to approach the civil court for variation, modification or clarification of the order of injunction/status quo, so that further steps may be taken by the authorities in accordance with Section 23(5) of the West Bengal Panchayat Act.

The court has not gone into the merits of the claims.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

With regard to the allegation of construction in violation of the order of the civil court, the petitioner is at liberty to approach the civil court, in accordance with law.

The disputes with regard to title, possession and boundary etc., shall not be decided by the panchayat authorities. The only question to be decided by the panchayat authorities 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 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.)