

S/L 4
16.1.2023
Court. No. 19
sn

W.P.A. 28457 of 2022

Dipankar Mondal
VS
The State of West Bengal & Ors.

Mr. Keshab Chandra Das
Ms. Aparajita Mondal
Mr. Biplab Adak

...for the Petitioner.

Ms. Sipra Majumder
Ms. Prativa Ghatak

...for the State.

Affidavit-of-service filed in Court today, be kept with the record.

Despite service, none appears on behalf of the respondent no.9 As this Court is not passing any mandatory orders in terms of the prayers made in the writ petition, but is relegating the entire matter before the competent authority to decide the allegation of unauthorized construction, the writ petition is taken up in the absence of the said respondent.

The petitioner alleges that the respondent no.9 had started raising construction on an agricultural land which has been classified as 'Sali'. The land pertains to L.R Dag no. 743, J.L no. 35 of mouza Baddipur.

The contention of the petitioner is that the respondent no.9 had forcefully entered into the land of the petitioner, started excavating earth and installed a tube-well for the purpose of raising a concrete construction. The issues as to whether the petitioner is a bargadar or not and whether the respondent no.9 has any right, title and interest over the said

property are not to be gone into in this proceeding. Neither this Court nor the panchayat authorities, have the jurisdiction to decide such issues. The issues which are to be decided in this case are whether the respondent no. 9 had started raising a construction or started making preparations to raise a construction over the land which had not been converted to Bastu and also whether any permission or sanction from the appropriate permission granting authority, had been obtained or not.

Under such circumstances, this writ petition is disposed of with a direction upon the permission granting authority, that is, Baligari No. 1 Gram Panchayat, to dispose of the representation of the petitioner being Annexure P/2 at page 13 of the writ petition, in accordance with law.

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 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 premises.
- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was 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 the sketch map, indicating the extent and nature of unauthorized construction, if any.
- d) Such report shall be handed over to the parties. The questions of right, title, possession and boundary disputes, shall not be decided by the panchayat authorities.
- 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, 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 date of communication of this order.

The petitioner is directed to serve a copy of the writ petition along with a server copy of this order upon the Baligari No. 1 Gram Panchayat.

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.)