

16.01.2023
Sl. No.5(DL)
srm

W.P.A. No. 28530 of 2022

Sri Arun Bar

Vs.

The State of West Bengal & Ors.

Mr. Indubhushan Das

....for the Petitioner.

Mr. Rajarshi Basu,
Mr. S.T. Mina

...for the State-respondents.

Affidavit-of-service is taken on record. Despite service none appears on behalf of the respondent Nos.5 to 9.

As this Court is not inclined to pass mandatory directions as prayed for, but is relegating the matter before the competent authority, the writ petition is taken up in their absence.

The petitioner alleges that the respondent Nos.6 to 9 have raised an unauthorised construction on Dag Nos.896 and 897 pertaining to Khatian No.1671 situated under mouza Borai, District-Hooghly.

Although the petitioner claims right, title and interest in respect of the said lands in question, this Court is of the opinion that such issues cannot be decided either

by this Court or by the panchayat authorities. There is an allegation of unauthorised construction, which must be addressed.

As such, the writ petition is disposed of with a direction upon the competent authority of the Borai Pahalampur Gram Panchayat, District-Hooghly, to dispose of the representation of the petitioner dated November 24, 2022 being annexure P-4 to the writ petition, in accordance with law. While doing so, the gram panchayat shall adhere to the following procedure:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent Nos.6 to 9, with 48 hours advance notice to the petitioner and the respondent Nos.6 to 9.
- b) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also the respondent Nos.6 to 9.
- d) 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 interim measures by stopping such construction.

- e) A hearing shall be given to all the parties. 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.
- 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 the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

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

The Court has not gone into the merits of the claim of the petitioner and the issues raised shall be decided by the competent authority of the Borai Pahalampur Gram Panchayat, District-Hooghly, in accordance with law.

The question of title, possession, encroachment, etc. shall not be gone into.

A copy of the writ petition along with a server copy of this order be served upon the Pradhan, Borai Pahalampur Gram Panchayat, District-Hooghly.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)