

S/L 16
09.01.2023
Court. No. 19
GB

W.P.A. 28689 of 2022

Sri Manabendra Mandal & Anr.
VS
The State of West Bengal & Ors.

Mr. Dipankar Aditya,
Mr. R. Jana.

...for the Petitioner.

Mr. Lalit Mohan Mahata,
Mr. Rudranil De.

...for the State.

Mr. Partha Sarathi Mondal.

...for the Respondent Nos.7 to 9.

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

The petitioners allege that the respondent nos.7 to 9
have raised a structure partly on the land of the petitioners
and partly on a panchayat road without any permission from
the permission granting authority.

Contrary to such arguments, the learned advocate for
the respondent nos.7 to 9 have produced a certificate issued
by the Pradhan of Muriganga-II gram panchayat which
states that the panchayat authorities had permitted the
petitioners to construct a shop on 6 decimals of land over
Dag No.543 of Mouza-Companir Char, corresponding to
Khatian No.28, J.L. No.10. The tax receipt issued by the
concerned gram panchayat has also been produced before
the Court.

The questions which fall for decision are as follows:-

- a) Whether the Pradhan was authorized to issue the
certificate.

- b) Whether such certificate was issued upon adoption of a resolution at the meeting of the gram panchayat.
- c) Whether Section 23(1) of the West Bengal Panchayat Act, 1973 and the rules framed thereunder could be given a go by while permitting such shop room to be raised.
- d) Whether the shop room could be raised on a plot of land which is classified as a 'Bandh' in the record of rights.

Section 23(1) of the West Bengal Panchayat Act, 1973 clearly provides that no new structure can be raised without permission from the appropriate permission granting authority. In this case, the permission granting authority was the Muriganga-II gram panchayat. Whether a formal permission in the format as provided in the Act and the Rules had been applied for by the petitioners and thereafter whether the same was allowed and sanctioned as per the procedure under the said Act and Rules have to be enquired and determined.

The disputed questions of facts which have been raised, cannot be decided by this Court. The writ petition is disposed of with a direction upon the panchayat authorities to determine the issues framed by this Court hereinabove 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 petitioners and the respondent nos.7 to 9. An advance notice of the inspection shall be served upon the petitioners and the respondent nos.7 to 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 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 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 title of the land shall not be gone into by the panchayat authorities.
- e) A hearing shall be given to the petitioners and the respondent nos.7 to 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 accordance with law.

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.

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.)