

25.01.2023
Sl. No.387(ML)
srm

W.P.A. No. 8335 of 2020
Bidyut Mallick & Ors.
Versus
State of West Bengal & Ors.

Mr. Manas Kumar Das
....for the Petitioners.

Mr. Santanu Kumar Mitra,
Mr. Gangaprasad Mukhopadhyay
...for the State-respondents.

Mr. S.K. Adhikari
...for the Respondent No.7.

Affidavit-of-service is taken on record. Despite service, none appears on behalf of the panchayat authorities.

The petitioners have alleged that the authorities of Silda Gram Panchayat, District-Jhargram did not take any steps on the basis of the representation dated September 27, 2020. The petitioners submit that the construction by the respondent No.7 on Plot No.519/709, J.L. No.305 of mouza Silda, adjacent to the plot of the petitioners, had been raised without permission from the panchayat authorities.

The learned Advocate for the respondent No.7 has submitted a copy of the prescribed application form which

had been filed before the authority, seeking sanction to build. The conversion certificate and the acknowledgement receipt, as also a copy of the plan which had been submitted, have been filed before the court. Subsequently, another online application was also made by the said respondent.

The petitioners contend that the construction was made sometime in 2020 and the respondent No.7 applied for permission only in December, 2021. The petitioners further submit that the writ petition was filed on October 7, 2020 when the construction had started. Thus, subsequent application for permission would not legalize an otherwise unauthorized construction and the provision of deemed sanction would not be applicable.

Having heard the learned Advocates for the respective parties, this Court is of the view that the factual disputes cannot be decided in this writ petition. The permission granting authority shall enquire into the matter and take steps in accordance with law, on the basis of the representation of the petitioners dated September 27, 2020 being annexure P/1 at page 11 of the writ petition. Whether the benefit of deemed sanction can be given to the respondent No.7 in the facts and circumstances of the case, shall also be decided.

Under such circumstances, the writ petition is disposed of with a direction upon the Silda Gram Panchayat, District-Jhargram, to dispose of the representation of the petitioners dated September 27, 2020 being annexure P/1 at page 11 of the writ petition, in accordance with law. While doing so, the gram panchayat shall adhere to the following procedure:-

- a) Inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent No.7, with 48 hours advance notice to the petitioners and the respondent No.7.
- b) Report of the inspection shall be prepared along with a sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioners as also the respondent No.7.
- d) In case, it is found on preliminary inspection that there may be reasons to believe that the constructions were 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 in respect of the alleged 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 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 petitioners and the issues raised shall be decided by the competent authority.

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 Secretary, Silda Gram Panchayat, District-Jhargram.

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.)