

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side**

WPA 1025 of 2023

**Biswambar Prasad and Anr.
-versus-
The State of West Bengal and Ors.**

Mr. Nripen Das
Mr. Debanjan Das
... for the petitioners.

Mr. Subir Kumar Saha
Mr. Pretom Das
... for the State.

Counsel for the petitioners, counsel for the State respondents and counsel for the respondent no.3 are present.

The petitioners have filed affidavit-of-service along with two envelopes wherein it reveals that the private respondent nos.11 and 12 have refused to accept the notice.

Let the affidavit-of-service along with the envelopes be kept with the record.

The grievance of the petitioners is that the private respondent nos.11 and 12 have started unauthorized construction without approval of the building plan due to which there is every apprehension for damage of the property of the petitioner which is situated adjacent to the land of the private respondents.

Counsel for the petitioners has relied upon a report dated 5th January, 2022 issued by the Block

Development Officer, Khoribari Development Block, Khoribari Darjeeling wherein it reveals that (1) there is no approved building plan from the competent authority of the house of Sri Kamal Mandal (2) the proposed land is not recorded in favour of Sri Kamal Mandal and (3) some neighbours have raised objection regarding the construction of the mobile tower. The Block Development Officer in his report has also stated that No Objection Certificate may not be given to the construction of the mobile tower.

This Court finds that there is a disputed question of fact whether the private respondents have started construction without the approval of the building plan or whether the private respondents are the recorded owners of the property in question. The said question cannot be decided by sitting in a writ jurisdiction and as such this Court finds that it would be appropriate to dispose of the instant writ application by directing the respondent no.4 i.e. the Sub-Divisional Officer, Siliguri to dispose of the representation filed by the petitioner dated 09.12.2022.

It is found from the record that though the petitioners have made a complaint along with the villagers on 09.12.2022 but the same was addressed to the Khoribari Panchayat Samiti, Block Development Officer and Raniganj Panishali Gram Panchayat but the same has not been addressed to the Sub Divisional Officer i.e. the respondent no.4 who is the competent authority to decide the dispute between the parties.

Accordingly, the petitioners are given liberty to make a comprehensive representation to the respondent no.4 within a week from date and if any representation is made by the petitioners to the respondent no.4, the respondent no.4 shall consider

the representation filed by the petitioners and shall dispose of the same by giving an opportunity of hearing to all the affected parties including the petitioners in terms of the West Bengal Panchayat Act, 1973 within four weeks from the date of receipt of the representation.

WPA/1025/2023 is disposed of.

(Krishna Rao, J.)