

19.09.2022
Sl. No.36(DL)
srm

W.P.A. No. 19556 of 2021

Mijanur Rahaman Mullick & Ors.

Vs.

**The Principal Secretary, Panchayat Department,
Government of West Bengal & Ors.**

Mr. Bhagbat Chaudhuri,
Sk. Nizamuddin,
Ms. Barnali Gupta

....for the Petitioners.

Mr. Malay Singh,
Mr. Tapas Ballav Mandal

...for the State-respondents.

Affidavit-of-service is taken on record. Despite service, none appears on behalf of any of the respondent Nos.5 to 14.

As this Court is not inclined to go into the merits of the allegations made by the petitioners, but deems it fit to relegate the entire issue to the appropriate permission granting authority under law, the writ petition is disposed of in their absence.

The petitioners have challenged illegal construction by the respondent Nos.7 to 14. The petitioners claim to be the owners of a land over which the '*bargadars*' are allegedly making some constructions. The law provides that in a panchayat area, no permission shall be required

for temporary constructions of a hut or tin shed structures. For '*pucca*' construction, permission would be necessary. The nature of construction can only be assessed by the authority.

The correctness of the allegations made by the petitioners are not gone into. The panchayat authorities must decide the issues. The petitioners have filed a complaint before the Pradhan of Sankarhati-II Gram Panchayat, District-Howrah dated March 31, 2021. The Sankarhati-II Gram Panchayat shall dispose of the complaint of the petitioners in accordance with law. While doing so, the concerned 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 all interested parties, with 48 hours advance notice to the petitioners all interested parties, as also the respondent Nos.7 to 14.
- 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 petitioners as also the respondents.

- d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and is continuing, the authorities may take interim measures by stopping such construction.
- e) A hearing shall be given to the petitioners and all other interested parties and the respondent Nos. 7 to 14. 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 question of title, encroachment, boundary dispute, etc. shall not be decided by the panchayat authorities. Whether the construction has been raised in accordance with law or not, shall be decided.

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

This Court has not gone into the merits of the claim of the petitioners and all points are kept open.

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.)