

**Circuit Bench of Calcutta High Court
at Jalpaiguri**

09 **24.02.**
sm **2020**

W.P.A. 278 of 2020

**Rakesh Kumar Gupta
Versus
The State of West Bengal & Ors.**

Mr. Saptanshu Basu
Mr. Suresh Kr. Mitruka,
Mr. Manotosh Bhowmik.
.....for the petitioner.

Ms. Supriya Singh.
....for the respondent no.7.

Mr. Anirban Banerjee.
.....for the respondent no.10.

Mr. Rajat Das,
Ms. Anumita Lahiri.
.....for the respondent no.9.

Mr. Debabrata Dhar,
Ms. Paramita Sahu.
.....for the State.

Affidavit of service filed in Court be taken on
record.

The petitioner and the respondent nos.9 and 10
appear to have certain disputes with relation to title of
certain plots of land. A civil suit praying for
declaration of right, title and interest is pending in
between the parties before the civil Court.

The petitioner complains that the private
respondents herein encroached the PWD land and are
making construction therein.

The petitioner submits that he has made

representations before the Block Development Officer and the other respondents praying for redressal of his grievance, but the said representations are pending consideration till date.

The allegation of the petitioner has been vociferously opposed by the learned advocate representing the private respondents.

The learned advocate appearing for the private respondent submits that as per convention the private respondents have made construction in the land in question after obtaining oral permission from the Prodhan of the Gram Panchayat. It has further been submitted that the private respondents are the owners of the plot of land where the construction has been made.

It has further been contended that the petitioner does not have any locus standi to challenge the construction made by the private respondents over their own land.

The petitioner on such submission relies upon the judgment delivered by the Hon'ble Division Bench of this Court in the matter Rampuria Brothers Pvt. Ltd. -Vs- Calcutta Municipal Corporation & Ors. reported in AIR 1988 Calcutta 370. The petitioner further relies upon an unreported decision by a Co-ordinate Bench of this Court delivered on 11th July,

2018 in W.P.7625 (W) of 2018 in the matter of Rajesh Kumar Surana –Vs- The State of West Bengal & Ors.

The Division Bench in Rampuria Brothers (supra) held that the Municipal Corporation is authorized to take a decision with regard to alleged violation of the Building Rules and the sanctioned plan even though the Title Suit in between the parties was pending.

In Rajesh Kumar Surana (supra) the Court was of the opinion that the petitioner being a citizen of India has every right to approach the writ Court in the event the respondent authority has failed to discharge their statutory duties as enshrined in law.

In the instant case the petitioner has complained of illegal construction by a private party over a government land. Whether the land belongs to the government or the private party is a matter of dispute to be decided before the appropriate forum. The said issue cannot be decided by any other authority except the Civil Court.

As regards the complaint of the petitioner alleging unauthorized construction by the private respondent the same is required to be looked into by the Executive Officer of the Panchayat Samity who happens to be the Block Development Officer, Matigara Block.

In view of the nature of the allegation made by the petitioner it will be appropriate if a direction is passed upon the Block Development Officer to decide the issue of unauthorized construction over government land.

In view of the above the instant writ petition is disposed of by directing the Block Development Officer, Matigara Block to consider the representation dated 24th January, 2020 made on behalf of the petitioner by his learned advocate, being annexure P-16 appearing at page 126 of the writ petition, strictly in accordance with the relevant rules/guidelines/circulars within a period of 8 weeks from the date of communication of a copy of this order after giving an opportunity of hearing to all the necessary parties and to pass a reasoned order and communicate the same to the petitioner within a fortnight thereafter.

It is made clear that the Block Development Officer shall not be entitled to decide upon the title of the land in dispute. The said officer shall only restrict his decision with regard to the illegal construction being made and make specific finding, on the basis of available records, as to whether the land is a government land or not. All the parties shall be entitled to rely upon all the necessary documents in support of their case.

It is needless to say that this Court has not gone into the issue regarding title of the land and the same shall be decided by the Civil Court.

WPA No.278 of 2020 is disposed of.

Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)