

Item No.124

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

18.03.2021
Ct-24

W.P.A.4688 of 2021
Astapada Karmakar & Anr.
v
The State of West Bengal & Ors.

Mr. Mrinal Kanti Mukherjee
... for the petitioners.

Mr. Sipra Majumdar
Mr. Prativa Ghatak
... for the State.

Mr. Subhajyoti Chandra
... for the respondent no.3.

Mr. Indrajeet Dasgupta
Ms. Puspita Bhowmick
Ms. Rima Biswas
... for the respondent no. 5.

The allegation of the petitioners is that the private respondent has made construction over a passage without obtaining a proper sanction from the Panchayat. A sanction has been granted for construction of the cement concrete road from Sankar Karmakar's house to Astopada Karmakar's house but the construction work cannot be carried forward as the

private respondent has occupied a portion of the said passage.

The petitioners rely upon a settlement which was entered into between the petitioners and the private respondent in the presence of the Pradhan and other members of the Gram Panchayat on November 30, 2020, wherein the private respondent admitted of encroachment and agreed to remove the encroachment from the said passage.

The Pradhan of the Bhagabanpur Gram Panchayat by a communicating letter dated January 8, 2021 intimated the Officer-in-Charge of the Kashipur Police Station to take necessary step for removal of the unauthorized construction by the private respondent. The petitioners complain that even thereafter the same has not been removed.

The petitioners further complain that the representation filed by them through their learned advocate on January 18, 2021 has also not been considered by the respondent authority till date.

The learned advocate appearing on behalf of the Panchayat submits, upon instruction, that notice was given upon the private respondent for removal of the illegal and unauthorized construction. As the same was not complied with, the Pradhan intimated the Officer-in-Charge of the police station to take necessary steps.

The learned advocate appearing on behalf of the private respondent denies the allegation of encroachment. It has been submitted that the construction was there for a long period of time. It has also been submitted that the private respondent has not encroached any portion of the passage. It has further been submitted that the private respondent was compelled to put in his signature in the alleged settlement which was entered into in the office of the Panchayat on November 30, 2020. It has been submitted that the private respondent has lodged a complaint before the police station wherein it has been mentioned that the signature was obtained from the private respondent by force.

The private respondent submits that the passage in question is a common passage between the house of the petitioners and the private respondent. The same is not a public passage and the private respondent occupies the said portion of the passage for a considerable period of time.

As it appears that the representation of the petitioners praying for demolition of the unauthorized pacca construction raised by the private respondent is pending consideration at the end of the respondent authority, no useful purpose will be served by keeping the writ petition pending.

The writ petition is accordingly disposed of by directing the respondent no. 3, Prodhan, Bhagobanpur Gram Panchayet to consider and dispose of the representation made by the petitioners, strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties, including the petitioners, at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order. The said respondent shall pass a reasoned order and communicate the same to all the necessary parties, including the petitioners, immediately thereafter.

In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.

It is made clear that this Court has not entered into the merits of the claim made by the petitioners and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioners.

The petitioners are directed to forward a copy of the representation dated January 18, 2021 to the

aforesaid respondent at the time of communicating the order of the Court.

WPA 4688 of 2021 stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)