

16.09.2021
Sl. No.7
srm

W.P.A. No. 11713 of 2021
Syed Md. Akram Ali
Vs.
The State of West Bengal & Ors.

Mr. Aswini Kumar Bera
...for the Petitioner.
Mr. Santanu Kumar Mitra
...for the State-Respondents.
Mr. Golam Mustafa,
Mr. Subir Sabud
...for the Respondent No.9.

The allegation of the petitioner is that the respondent No.9 has been constructing on R.S. Plot No.97/L.R. Plot No.109 in Mouza Islampur, J.L. No.412 pursuant to Khatian No.44/2, Police Station Debra, District-Paschim Medinipur. It is the contention of the petitioner that the construction is unauthorised.

Mr. Mustafa, learned Advocate appearing on behalf of the respondent No.9, submits that the writ petition should be dismissed with costs as the same is hit by principle of *res judicata*. It is the contention of Mr. Mustafa that this Court had on an earlier occasion dismissed a writ petition filed by the petitioner on the selfsame cause of action by an order dated March 5, 2021.

Mr. Mitra, learned Advocate appearing on behalf of the State-respondents, submits that the construction was made pursuant to a permission granted by the appropriate authority.

It also appears that a title suit is pending between the parties and the prayer of the petitioner for an injunction upon the respondent No.9 from changing the nature and character of the suit property and from raising new construction was rejected. A misc. appeal was filed by the petitioner which has also been rejected. The allegation of raising construction in the absence of any plan has been decided in an earlier round of litigation and the allegation of construction without permission remained unsubstantiated. This point cannot be re-opened now. It also appears that the construction was not enjoined by the Civil Court. Thus there is no basis of the allegation of the petitioner that the construction has been made in the absence of any permission or sanction from the appropriate authority. This point is decided against the petitioner especially because the said point has already been decided in an earlier round of litigation.

The contention of the petitioner that the construction has been made in violation of the plan/permission and also in violation of the Rules is also hit by the principles of constructive res judicata. If the petitioner files an appropriate application before the appropriate authority alleging that the

respondent No. 9 has deviated from the plan and rules by raising further construction after the order passed by this court in WPA 22547 of 2019, dated March 5, 2021, in that case, the appropriate authority shall decide such allegation in accordance with law upon hearing all parties and pass a reasoned order within eight weeks from receipt thereof.

This writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)