

WPA 13894 of 2021

Johora Molla

- Versus -

The State of West Bengal & Ors.

Mr. Biswarup Biswas

.....For the petitioner

Mr. Raja Saha

Mr. Biswabrata Basu Mullick

.....For the State

Affidavit-of-service is taken on record.

Despite service none appears either on behalf of the Panchayat authorities or the respondent no. 8. The track report has been annexed to the affidavit-of-service showing delivery of the postal article upon the said respondents.

The petitioner has alleged unauthorized construction by the respondent no. 8 on a portion of L.R. plot no. 368 measuring about 48 decimals out of 9.65 acres pertaining to L.R. Knatian No. 1164, Mouza – Matgaran, J. L. No. 156, Police Station – Basanti, District – South 24 Parganas.

It is submitted by the petitioner that on the basis of the complaint raised by the petitioner, the competent authority did not take any steps and accordingly, the petitioner moved this Court by filing W.P. 11608 (W) 2018. The said writ petition was disposed of by a co-ordinate Bench of this Court directing both the Pradhan, Basanti

Gram Panchayat and the Block Development Officer, Basanti, South 24 – Parganas to decide the disputes raised by the petitioner in the earlier writ petition. Accordingly, the Block Development Officer passed an order on March 10, 2021.

From the order, it appears that the BDO came to the conclusion that the dispute was civil in nature as encroachment of the property of the petitioner was the main grievance. Thus, the BDO passed an order relegating the parties to a civil court. The petitioner has challenged this order.

According to the petitioner, Section 23 of the West Bengal Panchayat Act, 1973 has not been dealt with by the concerned authority while passing the order impugned. In the opinion of the Court, Section 23 of the said Act does not empower the BDO to deal with illegal construction. When allegations are made that a construction has been raised or is being raised either in deviation of the plan, or without any permission of the panchayat authorities, the competent authority to decide the issue are the permission granting authority and thereafter the concerned Sub-Divisional Officer.

The contention of Mr. Biswas, learned advocate appearing on behalf of the petitioner that the order of the BDO is not as per law, is not accepted by the court. The BDO rightly held that the dispute over encroachment,

title, possession etc. cannot be decided by the BDO and the parties must approach the civil court.

However, the petitioner is at liberty to raise an objection before the competent authority of the Basanti Gram Panchayat, if the petitioner has any complaint that the construction made by the respondent no. 8 is without any permission from the authority concerned or in deviation of the permission granted by the authorities. If such objection is made, the same shall be disposed of in accordance with law upon hearing all the parties and by passing a reasoned order within a period of three months from the date of communication of this order, in accordance with law.

Needless to mention that the said authority of Basanti Gram Panchayat shall reach the said proceedings to its logical conclusion in accordance with law by taking into account Section 23 of the West Bengal Panchayat Act, 1973.

The writ petition being WPA 13894 of 2021 is disposed of.

There shall, however, be no order as to costs.

All parties shall act upon the server copy of this order duly downloaded from the official website of this Court.

(Shampa Sarkar, J.)