

25.11.2021
Sl. No.33
srm

W.P.A. No. 15956 of 2021

Sk. Ajhar Ali @ Sk. Azher Ali & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Bhudeb Chatterjee,

Mr. S.K. Ghosh

...for the Petitioners.

Mr. Jahar Lal Dey,

Mr. Benazir Ahmed

...for the State-respondents.

Mr. Sounak Bhattacharya

...for the Respondent No.7.

Mr. Keshab Chandra Das,

Ms. Aparajita Mondal,

Mr. Biplab Adak

...for the Respondent Nos.6, 8 & 9.

Affidavit of service is taken on record.

The petitioners have alleged illegal filling up of an agricultural land and conversion of the same to a *danga* and subsequent unauthorised construction of a two-storied building by the respondent No.6. The property pertains to LR Plot No.2906 of Mouza-Srikrishnapur, J.L. No.30 pertaining to LR Khatian No.5209. The petitioners claim to be the co-sharers of the said land.

Mr. Dey, learned Senior Government Advocate, appearing on behalf of the State-respondents, submits that on the selfsame cause of action a previous writ petition was

filed which was registered as WPA No.9717 of 2021. Ultimately, the said writ petition was withdrawn and by an order dated September 15, 2021, the writ petition was dismissed as not pressed without any liberty to file afresh. According to Mr. Dey, the present writ petition cannot continue on the selfsame cause of action.

Mr. Bhattacharya, learned Advocate appearing on behalf of the respondent No.7, and Mr. Das, learned Advocate appearing on behalf of the respondent Nos.6, 8 and 9, submit that the writ petition is barred by the provisions of constructive *res judicata* and the same cannot be permitted because the pleadings in both the writ petitions are identical. They claim that their respective clients have right, title and interest over the property in question.

This Court has considered the prayers in WPA No.9717 of 2021. It appears that the said writ petition was filed for a direction upon the authorities under the West Bengal Land Reforms Act, 1955 to initiate proceedings under Section 4C(5) and Section 4D of the West Bengal Land Reforms Act, 1955 against the persons/respondents Nos. 6 to 9 who have allegedly filled up agricultural land, and also for a direction upon the persons for restoration of the land.

In the present writ petition, the petitioners have prayed for a direction upon the Panchayat authorities to

demolish the unauthorised structures which have been constructed on the alleged land and thereby ensure restoration of the same.

As the issues raised in both the writ petitions arise out of a similar cause of action there can be similarity in and overlapping of pleadings. However, the present writ petition cannot be dismissed in *limine* as the prayers made in the said writ petition before this Court, must be restricted to the allegation of unauthorised construction alone. The contentions of Mr. Dey, Mr. Bhattacharya and Mr. Das that a civil suit is also pending over the same property cannot be a bar for the petitioners to maintain the writ petition. Here the allegations have been made against the Panchayat authorities as the said authorities have failed to take into consideration the complaint of the petitioners regarding unauthorised construction. Whether the petitioners are entitled to restoration of the land or to a declaration of title upon setting aside a decree of a civil court and upon cancellation of a sale deed in favour of the respondent Nos.7 to 9, cannot be denied either by the Panchayat authorities or by this court.

Thus, this writ petition is taken up to address the question of construction without a sanction plan. All other issues, which were before this Court in the earlier writ petition and which are before the Civil Court, are untouched

and those proceedings shall continue irrespective of the order passed herein.

The Court is not satisfied with the objection made by the petitioners before the Panchayat authorities. A general representation has been filed before various authorities and as such the mandatory prayers made in the writ petition cannot be allowed at this stage.

The petitioners are at liberty to approach the Panchayat authorities by filing appropriate objection with regard to the alleged unauthorised construction and if such objection is raised, the same shall be disposed of in terms of Section 23 of the West Bengal Panchayat Act, 1973 upon giving an opportunity of hearing to the petitioners as also the respondent Nos.6 to 9 to deal with the allegations made by the petitioners.

Needless to mention that an inspection shall be made upon notice to all the parties. A copy of the inspection report shall be supplied to the respective parties and thereafter a hearing shall be given to the petitioners as also the respondent No.6 to 9 and a reasoned order shall be passed and communicated to all concerned. The said proceeding shall be reached to its logical conclusion in accordance with law. This order shall have no impact on the civil suit. The question of illegal conversion, encroachment and title shall

not be decided by the Panchayat authorities. The authorities will restrict its proceedings only to the question of unauthorised construction, that is, whether the construction has been made in the absence of a sanction plan or in deviation thereof.

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

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.)