

30.11.2021
Sl. No.11
srm

W.P.A. No. 16884 of 2019
Dr. Lalit Kumar Maji & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Salil Kumar Sarkar
...for the Petitioners.

Mrs. Manjuli Chaudhuri,
Mrs. Mekhla Sinha
...for the Howrah Zilla Parishad.

Mr. Himadri Sikhar Chakraborty,
Mrs. Neelam Singh
...for the State-respondents.

Mr. Buddhadev Ghoshal,
Mr. Souri Ghosal,
Mr. Prabhat Kumar Singh
...for the Respondent Nos.5 to 9.

The petitioners are the owners of a *bastu* land situated at Mouza-Bankul, J.L. No.7, L.R. Dag No.2614, measuring about 15 satak under Jagatballavpur Police Station. It is the contention of the petitioners that the respondent Nos.5 to 9 have been raising a construction on Dag No.2615 without leaving adequate side space.

Challenging such construction, a writ petition had been filed and a co-ordinate Bench of this Court had directed the District Engineer, Howrah Zilla Parishad to dispose of the complaint of the petitioners within a period of two months by passing a reasoned order. Such order was passed on

November 30, 2018. It was also clarified that if the complaint of the petitioners is sustainable then immediate steps shall be taken in respect of the grievance in accordance with law with regard to the alleged illegal construction.

The District Engineer, Howrah Zilla Parishad held the hearing upon notice to the parties and the parties appeared before the said District Engineer. It appears that, on the basis of a written statement filed by Dr. Lalit Kumar Majhi, annexing some documents, the land was "sali". The District Engineer observed that the construction was going on in the southern side of the Dr. Lalit Kumar Maji's land and the construction was going on leaving 2 feet side space. It also appears that the report was filed by the Sub-Assistant Engineer, Howrah Zilla Parishad and some deviations have been found in violation of the sanction plan in the nature of one hanging cantilever. Thus, the District Engineer, Howrah Zilla Parishad directed the sanctioning authority, that is, the Pradhan for taking steps against such unauthorised construction for demolition. The petitioner seeks for a direction upon the Pradhan for implementation of the order of demolition.

It is the contentions of the respondent Nos.5 to 9 that they were allowed to make constructions by leaving adequate side space and rear space and in accordance with the sanction

plan by a civil court. The said order of the Civil Court has also been upheld by this Court and this Court had categorically passed an order that in the event the petitioners had any grievance as to grant of illegal conversion of the land in question or construction in violation of the sanction plan, such contentions could be raised either before the appropriate authorities or in an appropriate application alleging violation of the injunction order, before the civil court.

As it is the observation of the District Engineer, Howrah Zilla Parishad that there has been violation of sanction plan at least one construction of being a cantilever, this writ petition is disposed of with a direction upon the petitioners to move the appropriate application before the appropriate forum as also the Civil Court alleging violation of the injunction order and also pray for modification of the order of injunction. If such application is filed, the same shall be disposed of in accordance with law. The petitioners shall be entitled to file an appropriate application for variation, modification of the injunction order on the strength of the observation of the District Engineer, Howrah Zilla Parishad, which was issued on the basis of a direction of this Court. Although it is not for the Civil Court to decide and take steps with regard to unauthorised construction, the petitioners are being relegated to the Civil Court only because of the order passed by the civil

court in respect of such construction and upheld by this Court.

The applications to be filed by the petitioner shall be disposed of by the civil court within two months from date of filing.

The petitioners shall also be at liberty to add the Pradhan, Jagatballavpur 2 No. Gram Panchayat and Howrah Zilla Parishad as defendants in the suit by making appropriate application, which shall be decided in accordance with law upon hearing the parties.

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.)