

09.09.2021
Court No. 19
Item no.01
CP

WPA 1119 of 2021

Dipanwita Dasgupta

vs.

The State of West Bengal & ors.

(CIRCUIT BENCH AT JALPAIGURI)

(via video conference)

Mr. Arnab Saha

.....for the petitioner.

Mr. Swapan Kumar Dutta

Mr. Tapas Kumar Dey

.....for the State.

Mr. Partha Sarathi Bhattacharya

Mr. Jakir Hossain

Mr. Raju Bhattacharya

.....for the respondent no. 11.

Mr. Subrata Goswami

....for the respondent no. 4.

The writ petition has been filed challenging a construction and renovation work going on at the instance of the respondent No. 11 over a premises allegedly declared as a heritage structure which is the house of late Asruman Dasgupta, the Indian tutor of the Maharaja of Cooch Behar. The dispute is between the heirs of Asruman Dasgupta and Dhritiman Dasgupta, both since deceased. The

construction is allegedly being carried on by the heir of late Dhritiman Dasgupta and the petitioner also claims to be an heir of Asruman Dasgupta.

The petitioner is challenging the said construction on the ground that the construction/renovation should not be held on the portion declared as a heritage structure. It is also on record that Title Suit No. 26 of 2018 had been filed against the respondent no. 11 and others before the learned Civil Judge (Junior Division), Sadar, Cooch Behar in respect of the land measuring 0.64 acres lying under Mouja-Sahar Cooch Behar, Thak No. 914, J.L. NO. 130, RS Khatian No. 1560 & 1561, LR Khatian No. 6385, 15163, 604, 5174, 8542, 7647, 3011, 3310, 3456, 10671, 1839, 1991, 3317, 3802, 486, 5104, 6028, 6828, 7915, 728, 9609, 9923, RS Plot No. 10222, 10223, LR Plot No. 13541, 13542. The suit was for declaration of title and permanent injunction. The ad-interim order of injunction was refused. Misc. Appeal was preferred. The Misc. Appeal was also dismissed. It also appears that a preliminary decree was passed with respect to the proportionate shares of the parties in Title Suit No. 36 of 2014.

This writ petition has been filed challenging the sanction plan granted to the respondent no. 11 to

build on the portion of the property which allegedly, is a heritage property.

On the first day upon hearing the parties, this court directed that the Heritage Committee, Cooch Behar District, should conduct an inspection/investigation on the allegation of illegal construction and file a report before this court. From the said report it appears that Asruman Dasgupta and Dhritiman Dasgupta were sons of one Bhubanmohan Dasgupta and were the owners having eight anna share each in Plot Nos. 10222 and 10223 in Mouza – Sahar Cooch Behar, pertaining to RS Khatian No. 1560 & 1561. After the demise of Asruman Dasgupta and Dhritiman Dasgupta in 1975 and 1980 respectively, separate LR. Khatians were prepared by the authorities and that names of the respective heirs of Asruman Dasgupta and Dhritiman Dasgupta were incorporated in the record of rights. That during spot inquiry it had come to the notice of the enquiry team deputed by the District Magistrate as the Chairman of the District Heritage Committee, that the portion of the land listed at SL No. 56 of the Memo No. 79/N-1/WBHC/2008-09, dated July 5, 2019 as a heritage property was not being renovated or reconstructed. The son of the deceased brother of Asruman Dasgupta was constructing over a demarcated portion of the plot upon obtaining

sanction from the competent authority. The petitioner raised objections to the said report and it was directed that an exception may be filed by the petitioner. On the last occasion the Heritage Commission appeared before the court and also submitted that the Commission would look into the matter. Accordingly, the matter was adjourned in order to further ascertain the correctness of the statement of the petitioner as the court was conscious of the fact that the construction over the heritage property should not be allowed.

Today, the Secretary of the West Bengal Heritage Commission has also filed a report from which it appears that a meeting had been convened by the Committee and on the basis of the report of the District Magistrate with regard to the fact that no new construction was going on the portion declared as the heritage property was accepted by the Commission. The Chairperson of the Board of Administrators, Cooch Behar municipality has also filed a report from which it is revealed that the portion on which the respondent no. 11 has been constructing was not declared as the heritage property. The West Bengal Heritage Commission also looked into the details of the description of the land, photographs etc. to arrive at a decision that the construction is not on the heritage property.

The exceptions filed by the petitioner is taken on record. It is a reiteration of the allegation of construction over the heritage property which is a single storeyed structure. Photographs have also been annexed of the heritage structure.

This court has no way to ascertain whether the photographs annexed to the writ petition as also to the exceptions to the report is actually the construction which is going on on the heritage property. The municipal authorities, the District Magistrate who is the chairman of the Heritage Committee, the West Bengal Heritage Commission have all individually filed report to indicate that the construction is going on over a portion of the property which has been divided between the parties and has been recorded in a separate L.R. Khatians in the names of heirs of late Dhritiman Dasgupta, and late Asruman Dasgupta. The portion belonging to Asruman Dasgupta and subsequently to his heirs have been declared as a heritage property and the same has been recorded in separate LR Khatian, according to the report of the District Magistrate.

Now the question of encroachment, title, correctness of entries in the record of rights are not matters to be decided by the writ court sitting in the Group V determination. This court has enquired through different agencies of the State as to the

correctness of the statement of the petitioner. The challenge is only with regard to the legality of the grant of sanction plan by the Cooch Behar Municipality permitting construction by the respondent no. 11 on a heritage property. The facts narrated hereinbefore are sufficient for the court to come to the conclusion that, prima facie, there does not appear to be any construction on the portion declared as the heritage property and that the municipal authorities have issued sanction for construction on a separate, demarcated portion of the plot. Any further probe in this matter with regard to title, boundaries, encroachment will be done by a civil court. It is also for the District Magistrate to ensure that no construction is made on the heritage property.

There is no interference by the court either on the decision of the municipality to grant the sanction plan or on the construction going on but the district administration shall ensure that the heritage property is not encumbered in any way.

The writ petition is, thus, disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)