

S/L 6
14.11.2022
Court. No. 19
GB

W.P.A. 1111 of 2022

Sk. Maruf Ali
VS
The State of West Bengal & Ors.

*Mr. Sankar Paul,
Mr. Minaroj Khan.*

...for the Petitioner.

*Mr. Jahar Dutta,
Mr. Bipin Ghosh.*

...for the State.

*Mr. Sounak Bhattacharya,
Mr. Sounak Manda.*

...for the Respondent No.6.

Affidavit-of-service filed in Court today, be kept with the record.

Despite service, none appears on behalf of the Pradan, Jagatballavpur No.2 Gram Panchayat.

The allegation is that the respondent no.6 has been raising an unauthorized construction on L.R. Plot No.773 of Mouza-Telihati. The petitioner has annexed a map/demarcation plan in respect of the plots in question. It is the allegation of the petitioner that the respondent no.6 is the adjacent plot owner to the petitioner's plot. The petitioner claims ownership with regard to Plot No.774.

Mr. Bhattacharya, learned advocate appearing on behalf of the respondent no.6 submits that the respondent no.6 is the owner of Plot No.674 and the construction has been made on Plot No.674 upon obtaining sanction from the competent authority. The sanction plan, which has been approved by the Pradan of the concerned Gram Panchayat has also been produced before the Court.

It appears that the plan of the proposed double storeyed building submitted by the respondent no.6, for construction on Dag No.674 pertaining to L.R. Khatian No.866 of Mouza-Telihati, had been approved on April 17, 2016.

According to Mr. Bhattacharya, the respondent no.6 had restricted the construction to Plot No.674 and had raised the said construction in accordance with the plan.

The petitioner submits that the construction is on Plot No.773 and not on Plot No.674 and as such, the construction must be treated to be unauthorized. It is further submitted that as Plot Nos.773 and 774 are adjacent plots, a part of the construction has gone beyond the boundary of Plot No.773. The required mandatory side spaces have not been maintained. Allegations of violation of the building rules have been made.

These disputed questions of facts cannot be gone into by the writ Court. The respondent no.6 claims to be the owner of Plot No.674 and submits that a plan was approved by the authority concerned for construction on the said plot, whereas the specific allegation of the petitioner is that the construction was made on Plot No.773 in respect of which, the respondent no.6 did not have any permission.

The writ petition is disposed of with liberty to the petitioner to approach the authority with the allegations as set forth hereinabove. If such application is made, the same shall be disposed of in accordance with law. While doing so, the following procedure shall be adopted:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no.6. The Block Land and Land Reforms Officer shall also be present at the time of inspection and field enquiry/measurement in order to ascertain whether the construction was on Plot No.674 or on Plot No.773. An advance notice of the inspection shall be served upon the petitioner and the respondent no.6 and all other interested parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.
- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and had been continuing, the authorities may take such interim measures by stopping such construction.
- c) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.
- d) Such report shall be handed over to the parties. The question of right, title and possession shall not be decided by the panchayat authorities.
- e) A hearing shall be given to the petitioner and the respondent no.6. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the

competent authority. All points raised by either party, will be decided.

- f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of Section 23 of the West Bengal Panchayat Act, 1973.

The court has not gone into the merits of the claims of the petitioner and the issues involved shall be decided independently.

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

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)