

04.04.2022
Sl. No.19
ss

W.P.A. 1304 of 2022

Nabakumar Koley
Vs.
The State of West Bengal & ors.

Mr. Sukumar Ghosh
Mrs. Moumita Ghosh
... for the petitioner

Mr. Naba Kumar Das
Ms. Tanushree Pal Chowdhury
... for the State

Mr. Suman Basu
... for the respondent nos.5 & 6

Mr. Ayan Banerjee
Ms. Debjani Sengupta
... for the respondent nos.8 to 11

The petitioner has alleged that the respondent nos.8 to 11 have raised a construction on an undivided property situated at L.R. Dag Nos.777, 778, 777/843, Mouza Gajipur, J. L. No.50 in the jurisdiction of Hooghly Zilla Parishad.

It is contended that the said construction has been made without any sanction/permission from the District Engineer, Hooghly Zilla Parishad as also in violation of the building rules.

Mr. Banerjee, learned Advocate appearing on behalf of the respondent nos.8 to 11, hands over a copy of the permission/vetting order granted by the District Engineer, Hooghly Zilla Parishad dated July

26, 20221. He submits that the construction has been made pursuant to such permission.

Mr. Banerjee further submits that the question of co-ownership, title, encroachment etc. should not be gone into, either by this Court or by the authorities.

As a partition suit is pending between the parties, this Court does not make any observation on the rival claims of title by the petitioner as also by the respondent nos.8 to 11 as to co-shareship.

However, when there are allegations of unauthorised construction, the District Engineer of the Hooghly Zilla Parishad shall consider the complaint lodged by the petitioner and reach the same to its logical conclusion, in accordance with law and arrive at a conclusion as to whether the allegations made by the petitioner are correct or not. While doing so, the following procedure shall be adopted:-

- a) An inspection of the premises shall be conducted.

Such inspection shall be held in the presence of the petitioner and the respondent nos.8 to 11, within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondent nos.8 to 11. If the parties are not available to accept notice, the authorities shall

affix the notices of hearing and inspection at conspicuous places in their 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 was continuing, the authorities may take interim measures by stopping such construction.
- c) A 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, if prepared, shall be handed over to the parties.
- e) A hearing shall be given to the petitioner and the respondent nos.8 to 11. 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 the parties shall be decided. All documents filed by the parties, if any, shall be exchanged.
- 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 the statute.

The court has not gone into the merits of the claims and counter-claims of the parties and the issues involved

shall be decided independently. The question of title, boundary dispute and allegation of encroachment shall not be gone into. This enquiry shall be restricted to the allegations of construction in violation of the plan and in violation of the rules. The allegation of construction without permission shall not be required to be gone into unless it is found that the construction was made prior to the permission.

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

With the above observations, this 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 learned advocate's communication.

(Shampa Sarkar, J.)