

10.03.2022
Court No. 19
Item no.16
CP

WPA 1448 of 2022

Prabir Polley
Vs.
The State of West Bengal & Ors.

Mr. Ayanava Bhattacharyya
..for the petitioner.

Mr. Susanta Pal
Mr. Prabir Kumar Ray
....for the State.

Affidavit of service is taken on record.

Despite service none appears either on behalf of the Serajbati Gram Panchayat or on behalf of the respondent nos. 8 to 14.

The petitioner is aggrieved because the concerned gram panchayat has not taken any steps on the basis of the complaints lodged by the petitioner alleging unauthorized construction on L.R. Dag No. 164 and 167 pertaining to L.R. Khatian No. 402 and 503, of Mouza – Jyotkalyan, Police Station – Amta, District – Howrah. Reliance has been placed on an order of this court passed earlier, in WPA 25944 of 2018.

The petitioner submits that the question of title possession etc. are the subject matters of a civil suit, but the illegalities in the construction are covered by the provisions of Section 23 of the West Bengal Act,

1973, and cannot be adjudicated either in a civil suit or in the pending appeal before this court. As such, it is submitted that there was no reason for the authorities to remain silent, despite an order having been passed by this court on September 1, 2021.

The order of this court has been annexed to the writ petition as Annexure – P/5 at page 25 thereof. This court had directed as follows:

“It is alleged that despite such order the respondent nos.5 to 11 have started construction on a portion of the undivided property without any sanction plan. The petitioner has lodged complaint with the Pradhan, Serajbati Gram Panchayat, but no action has yet been taken. The petitioner relies on an answer to the query made by the petitioner under the Right To Information Act, from which it appears that the Pradhan of the Serajbati Gram Panchayat intimated the petitioner that no permission to build on the L.R. Dag No.164 and 167 has been obtained by any person.

Under such circumstances, the writ petition is disposed of with a direction upon the competent authority of the Serajbati Gram Panchayat to consider the representation/complaint of the petitioner and dispose of the same upon hearing the petitioner as also the respondent nos.5 to 11 and take all steps that may be necessary in accordance with law. A reasoned order shall be passed and communicated to all concerned. This Court has not gone into the merits of the claims of the petitioner and the Panchayat authority shall act independently.”

It also appears that the petitioner had made further representations before the Pradhan of the said gram panchayat, but the authorities did not pay any heed to the same. The petitioner is always at liberty to approach the civil court with regard to the violation of the order of status quo. However, whether

the construction is unauthorized or not is a matter to be decided in terms of Section 23 of the West Bengal Panchayat Act, 1973 by the appropriate authority under the law.

This court had directed that the representation/complaint of the petitioner must be disposed of upon hearing the respective parties.

Although Mr. Pal, learned advocate appearing on behalf of the State, submits that the panchayat authorities may not be in a position to take steps in view of the order of status quo. This court is of the opinion that the panchayat authorities, at least, should have considered the representation and should have arrived at a finding as to whether the constructions by the respondent nos. 8 to 14 had been made in accordance with the permission granted and as per the rules. Such exercise has not been completed by the panchayat authorities.

Under such circumstances, the writ petition is disposed of with a direction upon the panchayat authorities of the Sirajbati Gram Panchayat to dispose of the representation of the petitioner, which is Annexure – P/7 to the writ petition at page 36 thereof, in accordance with law, upon hearing the petitioner as also the respondent nos. 8 to 14.

An inspection of the premises shall be made in the presence of the parties in order to ascertain as to

whether the construction has been made in accordance with any permission granted or not or whether the said construction has been made as per the rules or in deviation of the rules.

A reasoned order shall be passed and communicated to all concerned. The petitioner will also be at liberty to approach the civil court with regard to the allegations of violation of the interim order, which shall be decided independently.

The panchayat authorities shall restrict its adjudication only on the aspect of allegations of unauthorized construction. The question of title, encroachment, boundary dispute etc. amongst the co-sharers, which are subject matters of the civil suit shall not be gone into.

The court has not gone into the merits of the claims and counter-claims of the parties and the issues shall be decided independently.

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

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.)