

S/L 25
21.03.2022
Court No.19
SD

WPA 2099 of 2022

Smt. Chhanda Paul
Vs.
The State of West Bengal & Ors.

<i>Mr. Ashim Kumar Roiuth</i> <i>Ms. Anindita Auddy (Das)</i>	...for the Petitioner.
<i>Mr. Himadri Sekhar Chakraborty</i> <i>Ms. Susnita Saha</i>	...for the State.
<i>Mr. Debabrata Saha Roy</i> <i>Mr. Arka K. Nag</i> <i>Mr. Subhankar Das</i>	...for the KMC.
<i>Mr. Amitabha Ghosh</i> <i>Ms. Nabanita Chatterjee</i> <i>Sk. Sujauddin</i>	...for the Respondent No.9.

The petitioner has alleged inaction on the part of the Bidhannagar Municipal Corporation. The petitioner has submitted that the Corporation must dispose of the demand of justice made by the petitioner by invoking powers under Section 286 of the West Bengal Municipal Corporation Act, 2006.

Reliance has been placed on several title deeds and record of rights in order to establish that LR Dag No.141 pertaining to LR Khatian No.1667 on which the respondent no.9 has allegedly raised unauthorized construction was actually the land of the petitioner. It is submitted that the building plan is a product of fraud and material misrepresentation. Hence, the interference of this Court is prayed for. Prayer is further made for a direction upon the

Corporation to cancel the plan by treating the demand of justice as a representation/complaint of the petitioner.

Mr. Routh, learned advocate appearing for the petitioner, relies on the purchase deed, the schedule of the said deed and also the record of rights. He submits that the portion marked 'C' which was purchased by the petitioner corresponded to RS Dag No.140 and 141. RS Dag No.140, 141 was renumbered as LR Dag No.140 and 141 under Khatian No.1667. The controversy is with regard to construction on a portion of LR Dag No.141(P).

It is further submitted that apart from the plot mentioned 'C', there was no vacant plot on LR Dag No.141 and as such, the petitioner had encroached upon a portion of LR Dag No.141 belonging to the petitioner and had raised unauthorized construction by wrongfully obtaining a sanction plan.

Mr. Ghosh, learned advocate appearing for the respondent no.9, submits that the Revenue Inspector on the basis of an application of the petitioner had filed a report before the Block Land and Land Reforms Officer from which it appeared that the land in respect of which the petitioner had claimed title did not pertain to Khatian No.1667 but pertained to Khatian No.1705 which stood in the name of respondent no.9. Such report of the Block Land and Land Reforms Officer was filed in a proceeding initiated before the learned Sub-Divisional Executive Magistrate, Barasat, by the petitioner.

The Bidhannagar Municipal Corporation has also submitted an information dated January 31, 2022 issued to the petitioner under the Right to Information Act, from which it appears that no building had been sanctioned in respect of LR Dag No.141 pertaining to LR Khatian No.1667. That the respondent no.9 had not applied for sanction in respect of any land pertaining to Khatian No.1667, but had applied for sanction in respect of LR Plot No141(P) under Khatian No.1705.

Mr. Ghosh has handed over a sanction plan from which it appears that a sanction was granted by the Bidhannagar Municipal Corporation with regard to LR Dag No.141(P), Khatian No.1705, Mouza-Tegharia, JL No.09 corresponding to RS Dag No.116. The documents handed over by the respondent no.9 are taken on record. The answer given by the Bidhannagar Municipal Corporation under the Right to Information Act and the sanction plan produced before this Court show that the construction has been sanctioned on LR Dag No.141(P) pertaining to Khatian No.1705. A civil suit is pending between the parties for declaration of right, title and interest and for permanent injunction in respect of LR Dag No.140 and 141 corresponding to LR Khatian No.1667.

It is the specific contention of the petitioner that the respondent no.9 had illegally encroached upon the plot owned and possessed by the petitioner. Hence, the civil suit has been filed for declaration of title and for permanent

injunction. The civil court has also passed an order restraining the defendant therein from dispossessing the plaintiff forcefully from the suit property. The suit property which has been described in the plaint, pertains to LR Dag No.140 and 141 corresponding to LR Khatian No.1667 of Mouza- Teghoria.

Whether CS Dag No.142 and 143 corresponding to RS and LR Dag No.140 and 141 of Khatian No.1667 is the same and identical plot to the plot claimed by the respondent no.9 as LR Dag No. 141 (P) pertaining to Khatian No.1705, are issues which have to be adjudicated by the civil court, upon evidence. The contention of the petitioner that the plan must be cancelled because fraud and misrepresentation has been practiced upon the Corporation cannot be granted at this stage. The Corporation has specifically submitted before the Court with documents that the sanction had been granted in respect of the LR Dag No. 141 (P) corresponding to LR Khatian No.1705.

The reasons assigned by the petitioner for cancellation of the sanction plan granted by the municipality are based on an assertion of the petitioner's title in respect of the plot of land in question. The petitioner's contention is that the land in question in respect of which the building plan for construction had been sanctioned, belongs to the petitioner. The respondent no.9 had forcefully entered into the said land and obtained a sanction, thereby denying the right, title and interest of the petitioner on the said land. Thus, according to

the petitioner by setting up a false claim of title over the said land on the basis of some sale deeds, the respondent no.9 had misled the Corporation into sanctioning the plan. It is submitted that the Corporation must invoke its power under Section 286 of the West Bengal Municipal Corporation Act, 2006 as the plan was sanctioned on the basis of fraud played by the respondent no.9 upon setting up an illegal claim of title, ownership and possession, in respect of the said plot.

For this Court to accept such contentions of the petitioner would amount to adjudication of a title dispute and as also the allegation of encroachment. These issues are already sub-judice before the civil court. The Corporation on the basis of the documents supplied by the respondent no.9, as required under the provisions of law for grant of sanction, approved the building plan submitted by the respondent no.9. Directing the Corporation at this juncture, to initiate proceedings for cancellation of the plan would be clothing the Corporation with the power to decide the validity of the title of the respective parties on the basis of their respective sale deeds and the record of rights. Such adjudication by a civic body, is not permissible under the law.

The remedy of the petitioner, is before the civil court for declaration of his right, title and interest. Once, the petitioner is successful in the civil suit, the consequences of the decision of the civil court shall follow and all points raised in the writ petition shall be available to the petitioner at that stage. Had this been a case of the respondent no.9

having submitted a plan by suppressing information with regard to the topography of the area or the site, or by manipulating the measurements with regard to mandatory open space or the floor area ratio, the Corporation could have been approached for cancellation of the plan on proof of fraud or material mis-representation. When the dispute evolves around assertion of title and allegation of forceful encroachment into the private property of the petitioner, neither the writ court nor the Corporation can adjudicate such dispute, at this stage.

If the petitioner contends violation of the order of the civil court, the petitioner is at liberty to approach the civil court, in accordance with law. The petitioner may also file appropriate application for implementation of the order of injunction. This order shall not affect the merits of the civil suit. Neither will this order be treated as a seal of the court on the construction that is being raised by the respondent no.9. All the points raised in this writ petition may be renewed at the appropriate stage.

Accordingly, the writ petition is disposed of.

There will be no order as to costs.

All parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)