

07.03.2022
Court No. 19
Item no.15
sn

WPA 2344 of 2022

Shri Sundar Mondal
Vs.
The State of West Bengal & Ors.

Mr. Joytosh Majumder
Mr. Arjun Roy
Ms. Sahali Mukherjee
Ms. Debapriya Mitra

.....for the petitioner.

Mr. Haradhan Banerjee
Mr. Subhrangshu Datta
Mr. P.P. Mukhopadhyay

....for the respondent no.8

Mr. L.M. Mahata
Mr. P.B. Mahata

..for the State

This writ petition has been filed by an adjacent plot owner challenging the permission granted by the panchayat authorities, to the respondent no.4, to construct thereupon. The premises was subsequently leased out to the respondent no. 6. The contention of the petitioner is that the permission to build on the concerned plot situated at R.S. Dag No. 534 pertaining to L.R. Dag No. 562 of Mouza Khukurdaha, Police Station Daspur, District Paschim Medinipore could not have been given, without hearing the petitioner, who was an adjoining owner, as the LR plot was still undivided.

It is submitted by Mr. Majumder, learned advocate for the petitioner that the challenge to the said permission are on the following grounds :-

a) The petitioner ought to have been heard before the permission was granted in view of the fact that the petitioner enjoyed a common boundary with the respondent no.4.

b) That the authority, who granted the permission acted beyond his jurisdiction.

c) The permission was granted in violation of the principles of natural justice.

d) Identification and demarcation of the land belonging to the respondent nos. 4 to 6 and the petitioner, were not correctly made before such permission was granted.

e) Any person who enjoyed a common boundary must be heard before such permission is granted to the contiguous/adjoining owner to construct over the plot.

f) Lastly, he submits that the Superintending Engineer, South-Western Highway Circle, PWD Road, Directorate did not accept the documents produced by the petitioner while considering the prayer for construction of an approach road, which meant that the permission had not been accepted by the authority.

Mr. Mahata learned advocate for the State respondents submits that the writ petitioner does not have any remedy before this Court in view of the order passed in Title Suit No. 3/2022, pending before the learned Civil Judge, Senior Division, Ghatal. He relies on an injunction order passed by the learned Civil Court, by which the respondent no.4 was allowed to construct strictly in accordance with the plan.

Mr. Banerjee, learned advocate for the respondent nos. 4 to 6 submits that in the deed of sale by which the petitioner became the owner of a portion of L.R. Dag No. 562 in Mouza Khukurdaha, the boundaries were categorically mentioned. Reference is made to the schedule of the sale deed which is at page 15 of the writ petition. The plot of Srimanta Giri, the respondent No.4 is in the north, to the plot purchased by the petitioner. He next submits that the area purchased by the petitioner had been demarcated by a wall. That the other co-sharers, whose lands had not been demarcated, had given their consent for grant of such permission and as such their signatures appeared on the permission.

The letter dated September 22, 2021 issued by the Superintending Engineer, South-Western Highway Circle, PWD Road, Directorate to the Executive Engineer, Midnapore Highway Division,

does not have any bearing with the permission granted by the panchayat authorities to construct on the portion of the plot owned and possessed by the respondent no.4. Such permission was granted under Section 23 of the West Bengal Panchayat Act,1973 (hereinafter referred to as the said Act).

Having considered the rival contentions of the parties, it appears to the Court that the purchase deed of the petitioner and the schedule thereto indicates specific boundaries of the portion of the plot in respect of which the petitioner has got right, title and interest. As per the schedule, the land of the petitioner is butted and bounded by the land of Srimanta Giri (respondent No.4) in the North, land of the petitioner in the South, Ghatal Panskura Main Road in the East and a water body of Nirmalya Bhunia and others in the West.

The respondent no.4 purchased a portion of the land pertaining to LR Dag No. 562, Khatian no.1217, J.L No. 150 Mouza Khukurdaha. The permission was granted to the respondent no.4 to construct on his portion of the said plot.

The petitioner filed a suit before the learned Civil Judge, Senior Division, Ghatal for partition, which was registered as Title Suit No.3 of 2022. The learned Court below appointed a learned advocate, who held a local inspection upon notice to both the

parties. The report of such local inspection was filed in Court and thereafter the injunction application was disposed of. The prayer of the petitioner in the injunction application filed in the partition suit was that the defendant no.1 that is, Srimanta Giri must be restrained by an order of injunction from raising any construction on the undivided plot.

The learned Court below upon perusal of the deeds of the respective parties and also upon considering the inspection report came to the finding that none of the parties would be prejudiced if the defendant no. 1 was allowed to complete the construction as per the site plan. It was directed that the defendant shall not claim any equity over such construction. That the defendant no.1 that is Srimanta Giri would be bound to demolish his structure upon final adjudication of the lis between the parties, if the situation so arises. Thus the learned Court protected the interest of the petitioner.

Reliance has been placed by the petitioner on the decision of ***National Institute of Mental Health & Neuro Sciences Vs. C. Parameshwara reported in (2005)2 SCC 256***. In the said decision, the Hon'ble Apex Court held that inherent power of the Court to make orders under Section 151, for the ends of justice, could not be taken away and in all cases a parallel proceeding would not operate as a

stay of other proceedings where the subject matters were not completely identical. With due respect, the said judgement does not apply in the facts of this case. The petitioner has not been able to show that there has been any violation of his fundamental rights or that the permission granting authority had acted contrary to law. Thus judicial review, at this stage is not permissible.

The law does not provide that an adjoining owner should be heard before a permission to construct is granted by the authority. An adjoining owner may raise an objection in case any construction is done unauthorisedly, or in violation of the permission.

In this case, at this stage, no such allegations have been levelled.

The decision in ***Shalini Shyam Shetty & anr. vs. Rajendra Shankar Patil*** reported in **(2010)8 SCC 329** is not applicable in this case, inasmuch as, at this stage, the Court does not find that there are allegations of violation of statutory duties by the authority.

The dispute raised by the petitioner in this writ petition, to the understanding of the Court, is with regard to the possibility of encroachment into the land of the petitioner and the right of the respondent nos. 4 to 6 to construct on a portion of the land

which was yet to be partitioned. LR Dag No. 562 is a big plot and yet to be partitioned amongst the co-sharers.

On the same reasoning, the decision of ***Radha Krishan Industries Vs. The State of Himachal Pradesh & Ors.*** reported in ***(2021) 6 SCC 771*** is also not applicable to the fact of this case. This is not a case for enforcement of fundamental rights of the petitioner.

The petitioner is a co-owner of L.R Dag No. 562. The petitioner purchased his portion of land with clear boundaries. The petitioner's complain that the construction would result in encroachment of the petitioner's portion, is a subject matter of the civil suit. The civil Court is in seisin of the partition suit and permitted, restricted construction by the respondent no. 4 with conditions. It has been also specifically ordered by the Civil Court that the construction will be subject to the final decision in the partition suit and the respondent nos. 4 to 6 shall be liable to demolish the structure, if it is found that the portion in which the construction had been made, fell within the share of the petitioner, when the final decree is passed in the partition suit. Thus, in the opinion of the Court the petitioner's right, title and interest over his share of the property has been protected.

The communication between the Highway authorities with regard to whether the permission should be granted to the petitioner to construct a concrete road as an approach road to the premises, cannot be considered to be a rejection or a withdrawal of the permission to construct, given by the panchayat authorities. The requirements as per communication of the letter are for the purpose of construction of the approach road to the plot of the respondent nos. 4 to 6, which the said respondents want to use for commercial purpose for running a Petrol Pump on the basis of an agreement with the Indian Oil Corporation.

Thus any order as prayed for, if passed in the writ petition would amount to modifying and/or vacating the order of injunction passed by the competent civil Court. If the petitioner has any other allegations with regard to the violation of the order of the learned civil court or any fraud and misrepresentation that may have been played on the learned civil court, the petitioner is at liberty to approach the learned civil court for appropriate orders. The order of the learned civil court cannot be challenged in this proceeding.

The observations made hereinabove are restricted to the disposal of the writ petition and

shall not be prejudice any other proceedings, which may be taken out by the petitioner.

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.)