

26.09.2022
Court No. 19
Item no.78
CP

W.P.A. No. 2368 of 2022

Selim Sk.

Vs.

The State of West Bengal & Ors.

Mr. Partha Pratim Roy
Mr. Sarbananda Sanyal
Ms. Poulami Chakraborty

.....for the petitioner.

Ms. Sipra Mazumdar
Ms. S. Roy

...for the State.

Ms. Manali Biswas

...for the respondent nos. 7 to 9.

Petitioner alleges that the respondent nos. 7 to 9 have raised certain construction on Plot No. 1070 of Mouza – Choa without any valid sanction plan. It also appears that a Title Suit had been filed by the petitioner claiming to be the exclusive owner of the said land. The suit was dismissed. Title Appeal No. 92 of 2013 was filed. The prayer for injunction was also refused.

The petitioner alleges that the issues involved in the title appeal are separate and distinct from the allegations in the present writ petition. He alleges that the said respondent nos. 7 to 9 have started new

construction on the land in question since December 30, 2021.

Learned advocate for the respondent nos. 7 to 9 submits that having failed in his endeavour to obtain an injunction against the respondent nos. 7 to 9 and having failed in his attempt to oust the said respondents who are joint owners with the petitioner, the writ petition has been filed on false and frivolous grounds. It is submitted that the existing structure belongs to the father of the parties. That no new construction has been done. No addition and alteration has been made to the external structure of the residential house. Only some repairing and plastering had been made. Reference is made to the provisions of Rule 19(2) of the West Bengal Panchayat (Gram Panchayat) Administration Rules, 2004.

Admittedly, unless there are structural changes or alteration in the existing covered area or in the projections from the existing structure or building, permission to repair is not necessary.

The petitioner submits that under the garb of repairing, the respondent nos. 7 to 9 have changed the nature and character of the existing structure.

These disputed questions of facts cannot be decided by the writ court.

The writ petition is disposed of directing the Choa Gram Panchayat to dispose of the representation of the petitioner dated January 4, 2022, 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 nos. 7 to 9. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 7 to 9 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 was 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.

- e) A hearing shall be given to the petitioner and the respondent nos. 7 to 9. 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(5) of the West Bengal Panchayat Act.

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

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

The dispute with regard to the title, possession and boundary etc. shall not be decided by the panchayat authorities.

The only question to be decided by the panchayat authorities, would be whether on and from December 30, 2021, new constructions have been made over and above the existing old structure.

A copy of the writ petition along with a server copy of this order be served upon the concerned gram panchayat for necessary compliance 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.)