

S/L 7
14.11.2022
Court. No. 19
GB

W.P.A. 2415 of 2022

Sudeb Mondal & Anr.
VS
The State of West Bengal & Ors.

*Mr. Sandip Ghosh,
Mr. Partha Sarkar.*

...for the Petitioners.

*Mr. Manas Kundu,
Mr. Sanjib Das.*

...for the State.

*Mr. Dhananjay Banerjee,
Ms. Oindrila Ghosh.*

...for the Respondent Nos.2 & 3.

Mr. Samrat Choudhury.

...for the Respondent Nos.5 & 6.

Affidavit-of-service filed in Court today, be kept with the record.

The allegation of the petitioners is that, the respondent nos.2 and 3 have failed to take steps. An application for permission to construct was filed by the petitioners seeking permission to construct on L.R. Plot No.1213 of Mouza-Madhusudanpur.

According to the petitioners, their grandmother, widow of the erstwhile owner had gifted the plot of land to the said petitioners. No documents have been annexed in support of such contention. No averments to that effect have been made in the writ petition. Reliance has been placed on the record of rights, prepared by the concerned department, in which the name of the petitioner no.1 has been mentioned. The petitioners have also averred that the respondent nos.5 and 6 have restrained the petitioners from enjoying the property in question.

As a dispute had been raised with regard to the title of the petitioners and their right to raise a construction on an undivided plot of land, in respect of which a partition suit is still pending, this Court had directed the Pradan of Beraberi Gram Panchayat to file a report.

Accordingly, a report has been filed. The preliminary decree, passed in Title Suit No.259 of 1997 by the learned Civil Judge (Senior Division), 1st Court at Hooghly has been annexed to the report. It appears that Plot No.1213 of Mouza-Madhusudanpur is still undemarcated and a partition suit in respect of the plot is still pending. On December 22, 2011, the learned Civil Judge (Senior Division), 1st Court at Chinsurah, Hooghly passed a preliminary decree declaring the share of the petitioners' grandfather, late Shiba Prasad Gonre as 1/12th in the suit property being 5 decimals (0.05 acres).

Shiba Prasad Gonre applied for a sanction to construct on the 5 decimals of land after the preliminary decree was passed. Plan was sanctioned on March 30, 2012. The Pradhan, Beraberi Gram Panchayat who has filed the report mentions that he was not the Pradhan at the relevant point of time. A construction was made. Shiba Prasad Gonre died on June 29, 2014 leaving behind his wife Nandarani Gonre @ Goray and his daughters Jogmaya Mondal, Niva Ghosh, Namita Surul and Sabita Ghosh. An application for substitution of the heirs of the late Shiba Prasad Gonre is still pending before the learned court below.

It is further submitted that the respondent nos.5 and 6 have also filed an application for injunction in the suit with a prayer to restrain the petitioners from raising any construction before the final decree is passed. As there was a dispute with regard to the shares, the Pradhan did not take any steps with regard to the application for permission to construct. The Pradhan found that the petitioners are the sons of one of the surviving heirs.

The other heirs and legal representatives of late Shiba Prasad Gonre did not apply for any sanction. The Pradhan also found that the mother of the petitioners, that is, one of the heirs of the deceased was still alive. Thus, the question of granting permission to the petitioners alone, could not arise. The petitioners failed to produce any documents to show that partition by metes and bounds had been effected and they had applied for sanction having exclusive share in the property although the heirs of the deceased were alive. The application for permission was kept pending. An enquiry was made by the concerned authority and it was found that some unauthorized constructions have already been raised on Plot No.1213, without any permission.

Under such circumstances, nothing further remains to be decided in the writ petition.

Accordingly, the writ petition is dismissed.

The issues raised in the civil suit shall be decided independently. This order shall not preclude the panchayat authorities from taking steps as per law.

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.)