

04.05.2022
Sl. No.16
ss

W.P.A. 2419 of 2022

Ali Hafiz
Vs.
The State of West Bengal & ors.

Mr. Joy Chakraborty
Mr. Sandip Dinda
... for the petitioner

Mrs. Manjuli Chaudhuri
Ms. Mekhla Sinha
... for the respondent nos.2 & 3

Mr. Sanjib Seth
... for the respondent no.8

The writ petition has been filed alleging that some unauthorised construction has been made by the respondent no.8.

Supplementary affidavit filed in Court, is taken on record.

It appears that a partition suit has also been filed and an order of injunction has been obtained in the form of *status quo* to be maintained by the parties.

The petitioner alleges that the respondent no.8 being a co-sharer in respect of L.R. Dag Nos.154 and 155 at Mouja Margurali, has made some unauthorised constructions without any permission from the Howrah Zilla Parishad.

It is submitted by Mr. Seth, learned Advocate appearing on behalf of the respondent no.8 that only repairs have been done and no construction has been erected, contrary to the rules.

Mrs. Chaudhuri, learned Advocate appearing on behalf of the Howrah Zilla Parishad submits on instruction, that some unauthorised construction has been detected.

Be that as it may, as there has been *prima facie* detection of unauthorised construction, the writ petition is disposed of with a direction upon the District Engineer of the Howrah Zilla Parishad to consider the complaint lodged by the petitioner and reach the same to its logical conclusion, in accordance with law and arrive at a conclusion as to whether the allegations made by the petitioner are correct or not. While doing so, the Howrah Zilla Parishad shall adhere to the following procedure:-

- a) An inspection of the premises shall be conducted.

Such inspection shall be held in the presence of the petitioner and the respondent no.8, within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondent no.8. If the parties are not available to accept notice, the authorities shall affix the notices of hearing and inspection at conspicuous places in their 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 interim measures by stopping such construction.
- c) A 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, if prepared, shall be handed over to the parties.
- e) A hearing shall be given to the petitioner and the respondent no.8. 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 the parties shall be decided. All documents filed by the parties, if any, shall be exchanged.
- 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 the statute.

The court has not gone into the merits of the claims and counter-claims of the parties and the issues involved shall be decided independently. The question of title, boundary dispute and allegation of encroachment shall not be gone into. This enquiry shall be restricted to the

allegations of construction in violation of the plan and in violation of the rules.

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

With the above observations, this 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 learned advocate's communication.

(Shampa Sarkar, J.)