

19.05.2022
Court No. 19
Item no.06
CP

W.P.A. No. 2923 of 2022

Lal Mahammad Molla
Vs.
The State of West Bengal & ors.

Mr. Sabyasachi Chatterjee
Mr. Debabrata Mondal
Mr. Sandipan Das
Mr. Sayan Chatterjee

...for the petitioner.

Mr. A.P. Lahiri
Mr. S.P. Lahiri

....for the State.

Mr. A. K. Routh
Mr. D. Chakraborty

...for the respondent no. 11.

Mr. Mohinoor Rahaman
Ms. Maria Rahaman

...for the respondent no. 9.

The petitioner is aggrieved by the construction erected on L.R. Plot No. 221 pertaining to L.R. Khatian No. 1138 in Mouza – Khalisadi, P.S. – Haroa, District – North 24 Parganas. Allegedly, such construction has been made by the respondent no. 11 without any permission from the panchayat authorities.

It is not in dispute that a partition suit is pending between the parties, before the learned Civil

Judge (Senior Division), Basirhat, North 24 Parganas. An order of status quo has also been passed. Allegedly, the construction has been made during the lockdown period. The petitioner claims to have brought the matter to the notice of the respondent no. 9 but the said respondent did not take any steps. The petitioner further submits that the panchayat authorities intimated the petitioner in an answer to a query under the Right to Information Act, that no permission had been granted for such construction and no fees had been deposited in the panchayat office in this regard.

Mr. Routh, learned advocate appearing on behalf of the respondent no. 11, submits that an application seeking permission had been made on October 3, 2019, that is, prior to the construction and the construction was made on the basis of a deeming provision under the Statute. He submits that such construction was made after the appropriate authority granted the conversion of the land from 'Danga' to 'Bastu'.

Mr. Rahaman, learned advocate appearing on behalf of the respondent no. 9, submits that the complaint was for enforcement of an order of injunction passed by the civil court and as such the panchayat authorities did not take any steps. The

remedy of the petitioner would be before the learned civil judge.

Having heard the learned advocates for the respective parties, this court is of the view that the partition suit shall continue in accordance with law. The order of status quo as passed by the civil court shall be enforced in accordance with law. Violation of such order may be challenged before the civil court by filing appropriate application. However, the issue with regard to a construction in the absence of a plan has to be decided by the panchayat authorities in terms of Section 23(1) of the West Bengal Panchayat Act, 1973.

The decision of the Division Bench, in the matter of Feluram Mondal & ors. vs. Subodh Kr. Mondal & ors. in MAT No. 2941 of 2006 cited by Mr. Rahman does not apply in this case. The Division Bench held that the panchayat authorities were empowered under the law to pass a final order under Section 23(6) of the West Bengal Panchayat Act, 1973 but could not issue interim orders.

However, without going into further details with regard to the allegations and counter-allegations, this court is of the view that the petitioner shall file a composite objection before the competent authority of the Salipur Gram Panchayat with specific allegations. If such application is filed,

the same shall be disposed of in accordance with law and the panchayat authorities shall follow the procedure stated hereinbelow:

- a) Inspection of the construction shall be conducted in the presence of the petitioner, the respondent no. 11 and other interested parties with 48 hours advance notice to the parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.
- b) Reports shall be prepared and handed over to the petitioner and the respondent no. 11.
- c) Thereafter, a hearing shall be given to the petitioner and the respondent no. 11 and any other interested parties. The parties must also be allowed to furnish their written objection/version to the said reports and adduce oral and documentary evidence in support of their contentions, before the competent authority. Mr. Routh's contention that the construction was made by invoking the deeming provision shall also be considered.
- d) 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 with regard to the constructions.

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

The court has not gone into the merits of the claims and counter-claims of the parties and the issues shall be decided independently.

The report filed by the police authorities is taken on record.

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.)