

12.05.2022
Court No. 19
Item no.09
CP

W.P.A. No. 4965 of 2022

Byomkesh Das
Vs.
The State of West Bengal & Ors.

Mr. Soumen Dutta
Mr. Sabyasachi Bhattacharjee
Ms. Arpita Kundu
...for the Petitioner.

Ms. Sutapa Sanyal
...for the State.

Mr. Balaram Patra
Mr. Suvadip Bhattacharjee
....for the respondent nos. 7 to 9.

The petitioner claims to be the co-sharers along with the respondent nos. 7 to 9 in respect of Plot No. 70 pertaining to Khatian No. 223 of Mouza – Dakshin Deulpota. The allegation is that during the pendency of a partition suit a construction of residential house has been undertaken by the respondent nos. 7 to 9 without any permission from the panchayat authorities.

Mr. Bhattacharjee, learned advocate appearing for the respondent nos. 7 to 9, submits that no construction has been raised but the area which is under the occupation of the said respondents have been protected by a boundary wall and the nature of the construction is such that permission was not

necessary. He further submits that such construction of the boundary wall will not grant him any equity in the partition suit.

Mr. Dutta, learned advocate appearing on behalf of the petitioner, submits that even if the construction is a brick built/concrete boundary wall, permission from the panchayat authorities would be necessary.

The police authorities have filed a report form which it appears that the dispute is over the enjoyment of the property between the parties and the police authorities have visited the locality and ensured that law and order is maintained. The report is taken on record.

Having heard the learned advocates for the respective parties, this court is of the view that as there are factual disputes which cannot be adjudicated by this court, the appropriate authority, namely, the gram panchayat must dispose of the issues. The competent authority of the Basantia No.8 Gram Panchayat must adjudicate the complaint of the petitioner dated March 8, 2022 being annexure – P3 to the writ petition, in accordance with law by adopting the following procedure:

- a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence of the parties, with 48

hours advance notice to the petitioner and the respondent nos. 7 to 9. If the parties are not available for service of the notice, the notice shall be affixed at a conspicuous place at the premises in question.

- b) During inspection, if any further construction is detected in violation of the rules, then the panchayat authorities can take interim measures.
- c) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- d) Such report shall be handed over to the petitioner as also the respondent nos. 7 to 9.
- e) A hearing shall be given to the petitioner and 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.
- 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 shall be decided independently.

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

As no affidavit has been called for, allegations are deemed to have been denied.

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.)