

23.
05.05.2022
S.D.

W.P.A. 4980 of 2022

Rajesh Shaw alias Gupta
Vs.
The State of West Bengal & Ors.

Mr. S.P. Pahari
Mrs. Piuli Koley

..For the Petitioner.

Mr. Pradip Kumar Dutta, Senior Advocate
Mr. Chanchal Kumar Dutta
Ms. Krishna Mullick

..For the Respondent Nos. 10 to 12.

Mr. Lalit Mohan Mahata, A.G.P.,
Mr. Prasanta Behari Mahata

..For the State.

The petitioner submits that the respondent nos. 6 to 12 have trespassed into the property owned and occupied by the petitioner and have made certain constructions without any permission. Allegation is that the construction has been raised in violation of an order of injunction passed by the learned Civil Court in Title Suit No. 162 of 2013. Accordingly, the petitioner approached the Pradhan, Rupnarayanpur Gram Panchayat with certain queries as to whether the respondent nos. 6 to 12 or any of them had been granted any permission to make construction on L.R. Plot No. 400 pertaining to Khatina No. 570 measuring about 8 decimals in Mouza – Rupnarayanpur. The said

representation of the petitioner has been kept pending by the Panchayat authorities.

The respondents Nos. 10 to 12 submits that the petitioner and the respondent nos. 6 to 12 have separate and independent demarcated lands. They are enjoying the respective lands and as such, the allegation of encroachment, demolition of the boundary wall etc. are frivolous.

It is further submitted that Title Suits are pending and matters with regard to title, forcible encroachment etc, cannot be decided in the proceeding.

This Court agrees with such submission and holds that neither the Writ Court nor the Panchayat authorities have any power to adjudicate the dispute with regard to title and the allegations of encroachment.

Under such circumstances, the writ petition is disposed of with a direction upon the Panchayat Pradhan to dispose of the prayer of the petitioner with regard to disclosure of information as to whether any permission had been granted to any person for a construction on L.R. Plot No. 400 pertaining to L.R. Khatian No. 570 of Mouza – Rupnarayanpur.

If any unauthorized construction is detected, then the Panchayat authority shall take necessary steps in accordance with law under the provision of Section 23 of West Bengal Panchayat Act, 1973 (hereinafter referred to as the said Act) and reach the same to its logical conclusion. While doing so, the following procedure shall be adopted in terms of Section 23 of the West Bengal Panchayat Act, 1973:-

a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no. 6 to 12 and all other interested parties. Advance notice of inspection shall be served upon the petitioner and the respondent nos. 6 to 12. If the parties are not available to accept notice, the authority 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 authority 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. 6 to 12. The parties must 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 documents relied upon by the respective parties 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. Keeping in mind the provisions of Section 23(5) of the said Act.

The complaint will be disposed of within a period of three months upon hearing the petitioner as also the representatives of the respondent nos. 6 to 12.

This Court has not gone into the merits of the claims and counter claims of the parties.

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 learned advocate's communication.

(Shampa Sarkar, J.)