

S/L 10
03.01.2022
Court. No. 19
GB

WPA 11529 of 2021

Kinkar Dinda
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Rwitendra Banerjee.

...for the Petitioner.

*Mr. Sudipto Panda,
Mr. Mihir Kundu.*

...for the State.

Mr. Subrata Ghosh.

...for the Respondent No.8.

*Mr. Srijib Chakraborty,
Mr. Aditya Mondal.*

...for the Respondent Nos.9 & 10.

The writ petition has been filed challenging a construction on L.R. Plot No.130 under Mouza-Sonamui, West Midnapore by the respondent nos.9 and 10. The allegation was that the construction was illegal and without any permission from the panchayat authorities.

The respondent nos.9 and 10 and the State authorities filed their respective affidavits. It is revealed that the construction has been made under the PMAY scheme. It is specifically submitted by the respondent nos.9 and 10 as also the State respondents that no permission was necessary for any construction under the said scheme from the panchayat authorities.

This Court had directed the concerned Block Development Officer to file a report as to how the entire process has been executed for construction under the PMAY

scheme. The Court was of the opinion that even if the construction was under the PMAY scheme, the same could not have been done without adhering to some basic rules. The Court was also of the view that encroachment upon a common village pathway could not be permitted, even if the construction was made by the beneficiaries under the PMAY scheme.

From the affidavit-in-opposition filed by the Block Development Officer, it appears that there was no demarcated common passage as per the R.S. records and the co-sharers had amicably decided to use a narrow strip of land for their ingress and egress. It is further recorded on inspection, that the said narrow strip of land was not a common passage demarcated as such. A four wheeler also would not be able to go through the said passage. All the respondents, namely, the Block Development Officer, the panchayat authorities and the respondent nos.9 and 10 have submitted before this Court that the mud path, passage was not blocked in any way.

However, the affidavits are silent with regard to the legality of the construction of a cornice above the window of the respondent nos.9 and 10. The Block Development Officer and the panchayat authorities have revealed that the respondent nos. 9 and 10 have erected a cornice above their window. According to the said respondents, the said cornice is at a height of about 8 ft. from the ground and as such, the ingress and egress of the co-sharers through the common pathway was not obstructed.

This Court is satisfied with the report to the extent that there is no obstruction on the common passage/pathway with regard to the ingress and egress of the eight co-sharers, who use the passage. However, whether the alleged cornice was authorized or according to the model plan and was permissible under the rules is a matter which has to be decided by the authorities in accordance with law.

The petitioner is at liberty to raise such objection with regard to the construction of the cornice and if such objection is raised, the same shall be disposed of in accordance with law by the competent authority within three months from receipt thereof. No further objection with regard to title and encroachment can be raised before the panchayat authorities by the petitioner. This liberty is granted only with regard to the cornices or shades over the doors and the windows allegedly constructed by the respondent nos.9 and 10, without adhering to the model plan submitted under the PMAY scheme.

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.)