

7.9.2022
Sl.No.27
sn

WPA 13071 of 2021

**Sk. Sariful Rahaman & Anr.
Vs.
The State of West Bengal & Ors.**

**Mr. M.A. Samad
Mr. M. Zahadi
..for the petitioners
Mr. Sirsanya Bandopadhyay
Ms. Tapati Samanta
..for the State
Mr. Taraknath Sarkar
Mr. Goutam Malik
..for the respdt.6**

The petitioners allege that the Pradhan of Daspur-II Gram Panchayat has sanctioned a plan in violation of the order of injunction passed in a partition suit. It is the specific contention of the petitioner that in the teeth of the order of injunction, such permission could not have been granted by the said authorities. It is also submitted that the respondent no.6 had misrepresented before the concerned authorities to be the owner of the area over which such construction would be raised.

The petitioners further allege that Section 23 of the West Bengal Panchayat Act, 1973 empowers the Gram Panchayat to grant sanction for raising construction. In this case, only the Pradhan had granted permission without following the law and by ignoring the order of injunction. By the said order, the defendant no.9 in the suit, (respondent No.6) was restrained from erecting a pucca construction

over the suit plot till the disposal of the suit. The application for temporary injunction was accordingly disposed of. The stand of the respondent no.9 before the civil court was that the construction had already been sanctioned and was as per a government scheme.

The defendant no.9 in the suit had specifically stated before the Court below, that the permission to construct was over 460 sq.ft. of the suit plot.

Considering the fact that each and every co-sharer has a right over each and every inch of an undivided property, the suit court had passed the order of injunction.

The police report indicates that the construction was almost completed. The police authorities directed the respondent no.6 to stop further construction on the suit plot. An altercation took place between the parties, and apprehending breach of peace, prosecution under Section 107 of the Code of Criminal Procedure were submitted. Such steps were taken by the police authorities when the police authorities found that the order of injunction had been violated.

Under such circumstances, when there is an order of injunction, such order has to be complied with. No construction can be raised. However, the issue as to whether the construction which has been

raised was in violation of the order of injunction is a matter of evidence and must be decided by the civil court. The prayer for restoration of the land to its original position by demolishing such construction must also be considered in the Title Suit. No. 212 of 2018, pending before the learned Civil Judge (Senior Division), Ghatal, Paschim Medinipore. In any event, no equity can be claimed in respect of the construction made during the pendency of the partition suit.

It appears that the plan was sanctioned before the order of injunction was passed. Whether the Pradhan of Daspur-II Gram Panchayat was aware of the suit or was misled by the statements made by the respondent no.6, is a matter of enquiry. The order of the learned civil court indicates that the plan had been sanctioned prior to the order of injunction and the respondent No.6 opposed the prayer for injunction.

As the petitioners have alleged collusion between the respondent no.6 and the Pradhan of Daspur-II Gram Panchayat, this Court grants liberty to the petitioners to approach the District Magistrate, Paschim Medinipore with his allegations. The process by which the sanction was granted to the respondent no.6 for construction must be looked into. Whether at all the plan which is Annexure P/2

dated December 27, 2018 was actually sanctioned in terms of Section 23 of the West Bengal Panchayat Act, 1973 is a matter to be looked into, specially because a civil suit is pending and the property is an undivided one. Consent of the other co-sharers were not taken.

If the petitioners approach the District Magistrate, Pschim Medinipur, the District Magistrate shall cause an enquiry into the affairs of the Gram Panchayat and upon perusal of the records and documents and upon hearing the petitioners, the panchayat authorities and the respondent no.6, shall pass necessary orders with regard to the manner in which such plan was sanctioned. Such decision shall be taken within a period of three months from the date of receipt of the petitioners' application. The construction shall abide by the decision of the Civil Court. In any event, it is settled law that no equity can be claimed in respect of the construction on an undivided property and in view of the pending partition suit.

The police authorities shall keep a vigil in order to ensure that the order of injunction is not violated by the respondent No.6.

This writ petition is disposed of.

There will be, however, no order as to costs.

All parties are to act on the basis of the server
copy of this order.

(Shampa Sarkar, J.)