

05.09.2022
Court. No. 19
Item 18 (ML)
Cp

W.P.A. No. 11905 of 2022

Chowdhury Razzakul Kadir & anr.
Vs.
The State of West Bengal & Ors.

Md. Hasanuz Zaman

... for the petitioners.

Mr. Manas Kumar Das

... for the respondent no. 12.

Mr. Himadri Sikhar Chakraborty
Mr. Parikshit Goswami

...for the State.

The petitioners allege illegal construction over a part of Dag Nos. 1282 and 1283.

The petitioners claim to be raiyats in respect of Dag No. 1282 in Mouza – Kandara pertaining to Khatian No. 8276. The petitioners came in possession of the said land by virtue of purchase sometime in 2020. The construction of the respondent no. 12 has been alleged to be illegal. It is alleged that the panchayat authorities could not have granted sanction for construction on the land as the same is a barga land. There was no conversion of the said land. It is also alleged that the reasoned order passed by the panchayat authorities, pursuant to the direction of this court is insufficient and lacking in material

particulars. The petitioners pray for cancellation of the sanction and removal of the alleged unauthorized construction.

Learned advocate for the respondent no. 12 submits that the said respondent has been a bargadar since 40 years under the erstwhile owner, the vendor of the petitioners. Sanction was granted in 2017 and construction was made prior to the purchase by the petitioners. He refers to the record of rights and submits that the land has been classified as a 'viti'. The said respondent has been recorded as the bargadar in respect of the said land and construction on a land which has been classified as 'viti' was permissible.

It appears that on the complaint filed by the petitioners with regard to the illegal conversion of the land, an FIR was registered under Sections 406, 506 of the Indian Penal Code read with Section 4D of the West Bengal Land Reforms Act. Upon completion of the investigation a charge-sheet has been filed under Sections 406 and 506 of the Indian Penal Code read with Section 4D of the West Bengal Land Reforms Act. The issue of conversion has been investigated and the said respondent no. 12 will face the consequences of such investigation.

It is the specific contention of the respondent no. 12 that the construction was made on the basis of a

permission granted by the panchayat authorities sometime in 2017. The construction was in existence when the petitioners purchased the land from the erstwhile raiyat under whom the respondent no. 12 was a bargadar. The erstwhile owner had granted such permission. He further submits that the intention of the petitioners was to evict the respondent no. 12.

The petitioner is at liberty to raise such issue of illegal conversion of land, before the Block Land & Land Reforms Officer. If such complaint is made, the authority shall decide the issue in accordance with law. The consequences thereof shall follow.

The consideration in this writ petition is restricted to the allegation of construction in absence of a plan. A coordinate Bench of this court had passed an order earlier on the basis of the complaint filed by the petitioner, directing the Pradhan, Malihati Gram Panchayat to consider and dispose of the representation of the petitioner strictly in accordance with law upon granting an opportunity of hearing to all the parties. The relevant portion of the order is quoted below:

“In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.

The aforesaid respondent shall restrict the consideration of the representation with regard to unauthorized construction only and

not enter into or decide any private dispute of the parties regarding right, title and interest in respect of the aforesaid land.

It is made clear that this Court has not entered into the merits of the claim made by the petitioners and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioners.

The petitioners are directed to forward a copy of the representation dated 1st February, 2021 to the aforesaid respondent at the time of communicating the order of the Court.”

It is clear that Her Lordship had directed the Pradhan to restrict the determination to the point of violation of the sanction plan and/or construction in the absence of a plan. The other issues which have been raised by the petitioners, had not been gone into by Her Lordship and no direction was passed with regard to the same.

As such, the order which was passed by the panchayat authorities as per the direction in the earlier writ petition is relevant for the purpose of determination whether the construction has been made in accordance with a plan sanctioned by the authority. The order is in favour of such construction. The panchayat authorities have held that the construction was in accordance with law. However, the other issues raised by the petitioners with regard to title, restoration of possession and illegal construction shall be decided by the appropriate forum and/or authority. The petitioner is at liberty to approach the

said authorities. The construction shall abide by any further decision of the appropriate authority.

This court has not gone into the merits of other claims of the petitioners.

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.)