

S/L 31
15.09.2022
Court. No. 19
GB

W.P.A. 16628 of 2021

Dhirendranath Mondal & Ors.
VS
The State of West Bengal & Ors.

Mr. Rwitendra Banerjee,
Mr. Shibasis Chatterjee.

...for the Petitioners.

Mr. Himadri Sikhar Chakraborty,
Mr. Shehnaz Tareq Mina.

...for the State.

Mr. Uday Narayan Betal.

...for the Respondent No.6.

Affidavit-of-service filed in Court today, be kept with the record.

The petitioners allege that the panchayat authorities had granted permission for construction of the house of the respondent no.6 on a misconception that the petitioner did not have any objection with regard to such construction. The petitioners claim to be the co-sharers of a plot of land, over which the construction is being made. Reliance has been placed on the provision of law, which states that unless the co-sharers grant their consent, construction on a joint property cannot be permitted.

Admittedly, a partition suit is pending between the parties. Every co-sharer has a right over every inch of undivided property. Thus, it has been settled by several judicial decisions that any construction on an undivided property shall be subject to the partition suit and the final decree. At best, the parties can claim for demarcation by metes and bounds upon maintaining their existing possession, if possible.

Another problem, which has cropped up in this writ petition is that, the contention of the petitioners that they had not granted their consent when the plan had been sanctioned, is barred by the principles of constructive res judicata. In the earlier round of litigation, when the petitioners moved the writ petition, the respondent no.6 had produced the plan and the sanction granted by the authority. The Court recorded such fact. The petitioners had not raised this point at the relevant time.

However, the petitioners' allegation that the construction is being made in deviation of the permission granted and in violation of the building rules, has not yet been decided.

Under such circumstances, the writ petition is disposed of with a direction upon the concerned Gram Panchayat to dispose of the representation of the petitioner dated July 17, 2021 in accordance with law.

While doing so, the following procedure shall be adopted:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent no.6. An advance notice of the inspection shall be served upon the petitioners and the respondent no.6 and all other interested parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the 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 had been continuing, the authorities 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. The question of right, title and possession shall not be decided by the panchayat authorities.
- e) A hearing shall be given to the petitioners and the respondent no.6. 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. All points raised by either party, will be decided.
- 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 Section 23(5) of the West Bengal Panchayat Act, 1973.
- g) The question of right, title, interest and the individual shares of the petitioners shall not be gone into.

The court has not gone into the merits of the claims of the petitioners and the issues involved shall be decided independently.

The entire exercise shall be completed within a period of 12 weeks from date of communication of this order.

As no affidavits have been called for, the allegations against the respondent no.6 are deemed to be denied.

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.)