

16.09.2022
Court No. 19
Item no.09
CP

W.P.A. No. 17207 of 2021

Biswanath Ghosh

Vs.

The State of West Bengal & Ors.

Mr. Anish Kumar Mukherjee

Mr. Amrit Sinha

.....for the petitioner.

Mr. Bibek Jyoti Basu

Ms. Rama Halder

....for the State.

Affidavit of service is taken on record.

Despite service none appears on behalf of the respondent nos. 4, 7 and 8.

As the Court is not inclined to pass mandatory directions, as prayed for in the writ petition, but is relegating the entire dispute for adjudication by the competent authority under law, the writ petition is taken up in their absence.

The writ petitioner alleges illegal and unauthorized construction by the respondent nos. 7 and 8 over the plot of land on which the petitioner claims to be the recorded owner. On the allegation of encroachment, trespass etc. Title Suit No. 43 of 2020 was filed by the petitioner for declaration and permanent injunction. An application under Order 39 Rules 1 and 2 of the Code of Civil Procedure was

also filed. By an order of injunction, the defendants in the suit and their men and agents were restrained from entering into the 'Ka' and 'Kha' schedule property and they were also restrained from disturbing the possession of the plaintiff in respect of the property in question and/or from changing the nature and character of the same. The petitioner alleges violation of the order of injunction and also erection of an illegal construction.

From the writ petition, it does not appear that the petitioner approached the permission granting authorities with his allegations of illegal construction. It appears that the petitioner through his learned advocate had written to the Pradhan, Chandpara Gram Panchayat about the order of injunction with a prayer for stopping such construction.

However, the issue with regard to raising a construction in violation of the order of injunction is a matter which has to be decided by the civil court. The petitioner is at liberty to approach the civil court with such allegations.

All that the panchayat authorities are authorized to determine is whether there has been any construction without a permission or in violation of the laws and rules framed thereunder. The petitioner has not made any specific averment with

regard to the alleged illegality. The averments in the writ petition only indicate that the petitioner is aggrieved by the violation of the order of injunction.

Under such circumstances, the writ petition is disposed of with a liberty to the petitioner to approach the concerned gram panchayat with specific allegations. The question of title, encroachment, violation of the order of injunction etc. cannot be determined by the panchayat authorities. The panchayat authorities shall determine whether the alleged construction is in violation of the law, without any permission or in deviation from the permission. 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 petitioner and the respondent nos. 7 & 8. An advance notice of the inspection shall be served upon the petitioner and the respondent nos. 7 & 8 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 was 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.
- e) A hearing shall be given to the petitioner and the respondent nos. 7 & 8. 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. The court has not gone into the merits of the claims.

The entire exercise shall be completed within a period of four months from the date of receipt of the application.

A copy of the writ petition along with a server copy of this order be served upon the concerned gram panchayat for necessary compliance of this order.

The civil proceedings and the criminal investigations pending against the petitioner shall continue, in accordance with law.

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.)