

02.05.2022
Court No. 19
Item no.03
CP

W.P.A. No. 16635 of 2018

Pabitra Das Adhikari & ors.
Vs.
The State of West Bengal & ors.

Mr. Ramdulal Manna
Mr. Sayan Mukherjee
Mr. U. A. Mandal
...for the petitioners.

Mr. Prasanta Kumar Giri
....for the State.

Mr. Binoy Kumar Das
...for the respondent nos. 6 to 8.

Affidavit of service is taken on record.

The petitioners have alleged that the respondent nos. 6 to 8 have made certain constructions on the Plot No. 1940 within Mouza – Porachingra, pertaining to J.L. No. 155, Police Station – Bhupatinagar, District – Purba Medinipur. It is the specific contention of the petitioners that such construction has been made sometime in 2016 by forcefully encroaching into the lands of the petitioners.

Mr. Das, learned advocate appearing on behalf of the respondent nos. 6 to 8, submits that the allegations are false and frivolous. That there is a clear demarcation between the respective lands

belonging to the petitioners and the respondent nos. 6 to 8. That the question of encroachment did not arise. That the construction has been made 50 years ago when Section 23 of the West Bengal Panchayat Act, 1973 was not in operation. Under such circumstances, it is prayed that the writ petition be dismissed without any order.

Learned advocate for the State respondents also submits that the dispute is civil in nature and neither the writ court nor the panchayat authorities can determine these issues.

Having considered the rival contentions of the parties, this court is of the opinion that the allegations of encroachment, the assertions of title of the petitioners in respect of the Plot No. 1940 etc. cannot be gone into either by this court or by the panchayat authorities. The question of title, the allegations of encroachment and the boundary disputes raised by the petitioners shall be decided by the appropriate civil court.

The panchayat authorities shall determine whether the constructions have been made by the respondent nos. 6 to 8 much prior to the constitution of the gram panchayat in the area. If it is found that the constitution of the gram panchayat in the said area, was before such construction was made,

whether a permission had been taken from the authorities or not.

Under such circumstances, the writ petition is disposed of with a direction upon the competent authority of the Ghorbari Gram Panchayat – I to dispose of the representation of the petitioners dated July 12, 2018, which is Annexure P-3 at page 15 of the writ petition in accordance with law, upon hearing the petitioners as also the respondent nos. 6 to 8 and other interested parties. The issues framed by this court shall be decided.

A reasoned order shall be passed and communicated to the parties.

If it is found that such construction (pucca) has been made after the gram panchayat was constituted and Section 23 of the West Bengal Panchayat Act, 1973 was in force, but no permission had been obtained in respect of such construction, then steps shall be taken by the competent authority in accordance with the provisions of Section 23 of the West Bengal Panchayat Act, 1973.

The court has not gone into the merits of the claims and counter-claims of the parties and the issues shall be decided independently.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

The writ petition is, thus, disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)