

S/L 46
22.09.2022
Court. No. 19
GB

W.P.A. 18090 of 2022

Sri Bhabotosh Giri
VS
The State of West Bengal & Ors.

*Mr. Sanjib Bandyopadhyay,
Ms. Nandita Baksi.*

...for the Petitioner.

*Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata.*

...for the State.

Mr. Nilanjan Pal.

...for the Respondent Nos.6 and 11.

The writ petition is not maintainable in its present form.

The petitioner has prayed for a direction upon the panchayat authorities to stop the construction on the suit plot and to demolish the same.

It appears that a civil suit is pending between the parties and an ad interim order in the nature of status quo was passed with regard to the nature and character of the suit property and with regard to the possession of the parties. The respondent nos.5 to 11 were also restrained from making any new construction over any portion of the suit plot. Such order was passed in Misc. Appeal No.27 of 2021 by the District Judge, Paschim Medinipur.

The petitioner alleges that in violation of the said order, the construction has been made.

The remedy of the petitioner with regard to such allegation would be before the civil court. The petitioner is at liberty to pray for implementation of the order with police help. Proceedings under Order 39, Rule 2A of the Code of

Civil Procedure is also another remedy. It further appears that the status of the property in question had not been mentioned in the order. Thus, whether there was an existing construction of the respondent nos.5 to 11 on the property or not, is also not available on records.

It is submitted by the respondent nos.5 to 11 that the construction was under a housing scheme, namely, PMAY and the construction was completed before the order of injunction was passed. It is also submitted that such constructions under the housing schemes are exempted from the applicability of Section 23 of the West Bengal Panchayat Act, 1973.

The learned advocate for the petitioner submits that even if the petitioner's construction was under the PMAY scheme, the approved plan/sketch map/drawing, which was supplied for such construction, was not followed by the respondents. No such contention has been raised in the writ petition. The writ petition has been filed for implementation of the order of the civil court, which cannot be permitted by a writ Court. The petitioner has other remedies under the law.

However, if the petitioner approaches the Block Development Officer with the allegation of violation of the drawing/sketch map, which was approved by the authority under the PMAY scheme for the construction of the respondent nos.5 to 11, such authority shall dispose of the said representation in accordance with law, upon affording an opportunity of hearing to all concerned.

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.)