

S/L 73
16.09.2022
Court. No. 19
sn

W.P.A. 19319 of 2021

Chayarani Mandal
Vs.
The State of West Bengal & Ors.

Md. Sarwar Jahan
Md. Ibrahim .for the petitioner

Mr. Rajarshi Basu
Mr. Kapil Guha .for the State

Mr. Radhashyam Maity
Mr. Monoranjan Maity .for the respondent no.7

Despite service, none appears on behalf of the respondent no.8. Affidavit-of-service filed in Court today, be kept with the records. This writ petition is taken up in his absence, as this Court is not entering into the merits of the claims of the petitioner. The matter is being relegated to the appropriate authority empowered by law, to deal with the issue of unauthorized construction.

The petitioner alleges that the respondent nos.7 and 8 had forcefully entered into Dag no.479/868, pertaining to Khatian no.3603 and had started an unauthorised construction.

The allegation is that the authorities of Dakshin Raipur Gram Panchayat have not taken any steps even after receiving a complaint from the petitioner.

Learned advocate for the respondent no.7 submits that a title suit is pending between the parties over the issues of title and encroachment. The parties are contesting the suit.

The petitioner has failed to obtain any order of injunction. The respondent no.7 is in possession of the suit plot. The allegation of unauthorised construction has been denied.

The issues with regard to the title, possession and encroachment etc. are matters to be decided in the civil suit.

A complaint was filed by the petitioner before the office of the concerned Gram Panchayat. The complaint does not indicate that such allegation had been specifically made. Omnibus allegations of unauthorised construction will not suffice.

This writ petition is disposed of, with liberty to the petitioner to approach the permission granting authority, in accordance with law. If such approach is made, the Dakshin Raipur Gram Panchayat or the competent permission granting authority, shall act and proceed on the basis of such representation and dispose of the same.

While disposing of the complaint, the following procedure shall be adhered to:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos.7&8 within three weeks. Advance notice of the inspection shall be served upon the petitioners and the respondent nos.7&8. If the parties are not available to accept notice, the authorities shall affix the notices of hearing and inspection at conspicuous places in their 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.

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, shall 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 the West Bengal Panchayat Act, 1973.

g) The question of right, title, interest and encroachment, shall not be gone into.

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

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 learned advocates' communication.

(Shampa Sarkar, J.)