

24.03.2022
Court No. 19
Item no.09
CP

W.P.A. 20162 of 2021

Naren Majumder
VS
The State of West Bengal & Ors.

Mr. Atis Kr.Biswas
Mr. Amit Singh
Ms. Jyoti Agarwal

... for the Petitioner.

Mr. Sekhar Pal
Mr. K.P. Majumder

..for the respondent nos. 10&11

Ms. Sudipta Roy
Mr. Srinath Singha Roy

....for the State

The petitioner alleges that the respondent nos. 10 and 11 have raised certain unauthorized constructions without any permission from the panchayat authorities in respect of 23 decimals of land situated at Dag No. 11669 of Mouza – Betai, J.L. No. 89 under Betai – I Gram Panchayat. The contention of the petitioner is that the portion over which the construction is being made is adjoining to the land of the petitioner situated at Dag No. 11669 pertaining to L.R. Khatian No. 1771/1, Mouza – Betai, J.L. No. 89. It is submitted that the construction is not only unauthorized, but has been made on government land.

Mr. Pal, learned advocate appearing on behalf of the respondent nos. 10 and 11, submits before

this court that a suit is pending between the parties in respect of the selfsame cause of action being Title Suit No 109 of 2021 before the learned Civil Judge (Junior Division), Tehatta, Nadia. He submits that in view of the proceedings before the civil court, the writ petition should not be entertained. He further submits that the construction is being done by the respondent nos. 10 and 11 on their own plot and in accordance with the sanction plan. The plan has been submitted before the civil court.

The plaint has been submitted before the court from which it appears that the suit is for permanent injunction, restraining the respondent nos. 10 and 11 from entering into the suit property owned and possessed by the plaintiff. The schedule of the suit property is 24 decimals of land pertaining to L. R. Plot No. 11669 pertaining to Khatian No. 1771/1, which is the land of the petitioner.

In any event, the civil court is not the authority to decide as to whether there has been any unauthorized construction or not. The panchayat authorities are empowered under Section 23 of the West Bengal Panchayat Act, 1973 to act and proceed in respect of any unauthorized construction. The civil suit shall proceed in accordance with law and shall not be influenced by any order passed by this court. If any permission has been granted to the respondent

nos. 10 and 11 to construct their building, records of such permission shall be available at the panchayat office.

Thus nothing further remains to be decided in the writ petition.

The writ petition is disposed of with a direction upon the competent authority of the Betai – I Gram Panchayat to dispose of the complaint of the petitioner dated December 2, 2021 in accordance with law. While doing so, the following procedures shall be adopted:

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the parties, with 48 hours advance notice to the petitioner and the respondent nos. 10 & 11.
- b) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also the respondent nos. 10 & 11.
- d) A hearing shall be given to the petitioner and the respondent nos. 10 & 11. 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.

- e) 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 statute.

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 questions of title, encroachment and boundary disputes etc. shall not be decided by the panchayat authorities. The only question to be decided by the panchayat authorities would be whether the construction made by the respondent nos. 10 & 11 is without any permission and/or in violation of either the building rules or the plan.

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.)