

14.01.2022
Item No.5
with S.L.1
srm

W.P.A. No. 20166 of 2021
Shyamapada Debnath
Vs.
The State of West Bengal & Ors.

With
W.P.A. No. 16743 of 2021
Krishna Biswas
Vs.
The State of West Bengal & Ors.

Mr. Atis Kumar Biswas,
Mr. Amit Singh
...for the Petitioner in WPA 20166/2021
& Respondent No.8 in WPA 16743/2021.

Mr. Golam Mustafa,
Mr. Samirul Sardar
...for the Petitioner in WPA 16743/2021
& Respondent No.8 in WPA 20166/2021.

Mr. Srijan Nayak,
Mrs. Rituparna Maitra
...for the State-respondents in
WPA 20166/2021.

Affidavit of service filed by the petitioner in WPA 20166
of 2021 is taken on record.

The writ petition being WPA 16743 of 2021 has been
enlisted on an urgent basis in the supplementary list in view
of the fact that a similar cause of action has been pleaded in
the said writ petition as in WPA No.20166 of 2021. Both the
writ petitions are taken up together and are disposed of by a
common order.

The petitioner in WPA No.20166 of 2021 has alleged illegal and unauthorised construction by the respondent No.8 by constructing the first floor of a building situated at Plot No.670 within Mouza-Pattabuka huda, District-Nadia.

According to Mr. Biswas, learned Advocate appearing on behalf of the petitioner in WPA 20166 of 2021, the said construction has been made without any permission from the panchayat authorities. It is further submitted that complaints have been made to the authority but no steps have yet been taken. It has also been pleaded that the petitioner tried to raise a wall on the first floor but on the complaint made by the respondent No.8 such construction was stopped. He prays that an order be passed directing the respondent No.8 to demolish the unauthorised structure.

Mr. Mustafa, learned Advocate appearing on behalf of the petitioner in WPA 16743 of 2021 and the respondent No.8 in WPA 20166 of 2021, submits that his client also filed a complaint with the Karimpur-II Gram Panchayat, Nadia, *inter alia*, alleging that the petitioner in WPA 20166 of 2021, namely, Shyamapada Debnath has raised illegal construction without leaving mandatory space which has obstructed the light and air to the premises of Smt. Krishna Biswas, who is the petitioner in WPA 16743 of 2021.

Mr. Nayak, learned Advocate appearing on behalf of the State-respondents in WPA 20166 of 2021, submits that the dispute is with regard to the construction of a wall and private in nature. According to Mr. Nayak, whether the constructions have been made on the area owned and occupied by the respective parties must be decided by a civil Court.

Having considered the rival contentions of the parties, this Court is of the opinion that the question of title or encroachment or boundary dispute cannot be decided either by this Court or by the panchayat authorities. Whether the parties are required to take permission to construct the alleged boundary wall is also a matter to be looked into by the authority empowered by law.

In view of the fact that both parties have made the allegations against each other with regard to unauthorised/illegal constructions, this Court is of the opinion that the competent authority of Karimpur-II Gram Panchayat shall look into the issue. Accordingly, both the parties are granted liberty to file their respective complaints in details before the concerned authority. The concerned authority shall dispose of the said complaints in the manner provided hereinbelow:

- (a) The competent authority of the Karimpur-II Gram Panchayat shall cause an inspection of the premises in question in the presence of all the interested parties in order to ascertain whether there are any unauthorised constructions and also to ascertain the extent and nature of the unauthorised constriction, if any.
- (b) A copy of the inspection report shall be handed over to the respective parties.
- (c) The respective parties shall be given a hearing.
- (d) The parties shall be allowed to file their written versions and adduce oral and documentary evidence in support of their respective claims at the hearing.
- (e) A reasoned order shall be passed and communicated to all concerned.
- (f) Needless to mention that the entire proceedings shall be reached to its logical conclusion in terms of Section 23 of the West Bengal Panchayat Act.

In view of the rising pandemic situation, the entire exercise shall be completed within a period of eight months from the date of communication of this order.

This Court has not gone into the merits of the claims and counterclaims of the parties and all points will be decided by the municipal authorities, independently.

Both the writ petitions are, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)