

7.11.2022
Sl. No.25/sn

W.P.A. No. 22008 of 2022

Lakshmi Kanta Malik

Vs.

The State of West Bengal & Ors.

Mr. Sounak Bhattacharyya

Mr. Sounak Mandal

....for the Petitioner.

Mr. Himadri Sekhar Chakraborty

Mr. K.M. Hossain

...for the State-respondents.

Mr. Nirmalya Kr. Das

..for the respondents 5 to 7

The petitioner alleges that the respondent nos. 5 to 7 raised an unauthorized construction on an undivided plot of land. A partition suit is allegedly pending.

The learned advocate for the respondent nos. 5 to 7 submits that the petitioner has filed a civil suit. That an oral partition had been effected between the parties amicably and the parties had started enjoying their respective shares on the basis of such amicable partition.

This Court is not inclined to make any observation with regard to the issue of partition between the petitioner and his co-sharers. Although the respondent nos. 5 to 7 have submitted a plan indicating that the partition of the individual shares belonging to the co-sharers would be

clear from the plan, this issue is not germane for adjudication. The share of the respondent Nos. 5 to 7 is not in question in this writ petition. The respondent nos. 5 to 7 may be constructing within the area allotted under the mutual agreement for partition. Whether the construction or repair is on the basis of a sanction/permission from the appropriate authorities, is the question.

It is submitted by respondents that the existing building had been repaired and no separate construction has been made which would either change the external features or increase the plinth area of the existing structure. These disputed questions of facts cannot be gone into by the Writ Court.

Rule 19(2) of the West Bengal Panchayat (Gram Panchayat Administration) Rules 2004 provides the cases when repair can be undertaken without permission.

The petitioner has filed a complaint before the Pradhan, Moukhali Gram Panchayat, which is Annexure P/1 at page 12 of the writ petition. The concerned Gram Panchayat shall dispose of the complaint of the petitioner in accordance with law.

While doing so, the following procedure shall be adopted.

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of all interested parties, with 48 hours advance notice to the petitioner and all interested parties, as also the respondent nos.5 to 7.
- b) The report of the inspection shall be prepared along with the sketch map, indicating the extent of deviation, if any. Whether any construction had been made or only repairs had been undertaken, shall be indicated in the report.
- c) Such report shall be handed over to the petitioner as also the respondent nos. 5 to 7.
- d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction/repair required permission but was undertaken without permission and was continuing, the authorities may take interim measures by stopping such construction.
- e) A hearing shall be given to the petitioner and all other interested parties as also the respondent nos. 5 to 7. 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.

- f) The only issue to be decided is whether any repair or construction had been made in violation of Section 23 of the West Bengal Panchayat Act, 1973 and the rules framed thereunder.
- g) A reasoned order shall be passed and communicated to the parties.
- h) If any unauthorized construction and/or unauthorized repair is detected, steps shall be taken in accordance with law.

The question of title, encroachment, boundary dispute, etc. shall not be decided by the panchayat authorities.

The entire exercise shall be completed within a period of three months from the date of receipt of the petitioner's representation.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)