

16.11.2022
Court No. 19
Item No.21
CP

WPA No. 23724 of 2022

Md. Mujibar Rahaman Molla
Vs.
The State of West Bengal & Ors.

Mr. Mohinoor Rahaman
Ms. Maria Rahaman
...for the petitioner.

Mr. Lalit Mohan Mahata
Mr. P.B. Mahata
...for the State.

Affidavit of service is taken on record.

Despite service, none appears on behalf of the
respondent nos. 7 and 8.

As the Court is not inclined to pass mandatory
directions against the said respondents, but is
relegating the entire dispute for adjudication by the
competent authority under law, the writ petition is
taken up in their absence.

The petitioner has alleged that the panchayat
authorities have failed and neglected to take steps in
respect of a construction made by the respondent
nos. 7 and 8 under the PMAY Scheme.

The petitioner alleges that the respondent nos.
7 and 8 were wrongly permitted to construct on Plot
No. 1272 of Mouza – Jhikra although they did not
have a clear title. The allegation is that a suit for
partition and injunction being Title Suit No. 18 of

1987 is pending before the learned Civil Judge (Senior Division), Barasat. A preliminary decree was also granted in favour of the petitioner and partition was directed to be effected upon appointment of a learned advocate commissioner. It is submitted that final decree has not yet been passed and there is no partition by metes and bounds.

It appears that the learned Advocate commissioner had been appointed and allotments had been fixed. He filed a report. The lands of the plaintiff nos. 1 and 2 were divided and denoted as Lot A and Lot B. Lot A was allotted to plaintiff No. 1 and similarly Lot B was allotted to plaintiff No. 2. Demarcation was done in yellow colour.

The petitioner claims to be one of the heirs of Liakat Ali. Respondent nos. 7 and 8 are allegedly the co-sharers/defendants in the suit. Thus, unless and until the partition is effected in terms of commissioner's report or any subsequent report and a final decree is passed, the alleged construction under the PMAY Scheme, cannot be questioned after seven years from completion of the same.

Admittedly, Section 23 of the West Bengal Panchayat Act, 1973 does not have any application in respect of constructions under any housing scheme. Such construction must be made in

accordance with the drawing/sketch/model plan supplied by the authorities.

If the writ court directs the authority to enter into the question as to whether the respondent nos. 7 and 8 had the right, title and interest over the plot in question, this court would be empowering the authority to decide a title dispute and such decision shall also have an effect on the pending partition suit.

Moreover, the partition suit is pending since 1987 and the petitioner had ample opportunity to approach the suit court for necessary orders of status quo over the property in dispute. Such opportunity was not availed of. From the records, it does not appear that an order of status quo had been passed in respect of the said plots in question. The petitioner has not been able to demonstrate that the area over which the construction has been made falls within Lot A.

In the pending partition suit, the right, title and interest and share of the petitioner must be decreed in final form and, thereafter, if the area over which such construction has been made is allotted in favour of the petitioner, in that event, the petitioner can take steps for implementation of the order of allotment of shares. No one can claim any equity in

respect of any construction over an undivided property.

This court cannot direct the panchayat authorities to take steps as this is not a simple case of unauthorized construction.

The petitioner has already been granted opportunity to approach the appropriate forum with regard to the said construction. In the opinion of this court, the appropriate forum in the facts of this case would be the civil court before which the partition suit is pending.

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.)