

16.11.2022
Sl. No.28
sn

W.P.A. No. 24030 of 2022

Bhabatosh Mandal & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Ziaul Haque
Mr. Manish Kr. Dasfor the petitioners

Sk. Mujibar Rahaman
Mr. Somenath Naskar
...for the State-respondents.

Mr. Biswarup Biswas
Mr. Tanmay Mukherjee
Ms. Rimpi Mukherjee
..for the respondent no.7

The petitioners allege that the panchayat authorities must dispose of the application dated September 5, 2022 filed by the petitioners claiming cancellation of the sanction granted in favour of the respondent no.7.

It is the contention of the petitioners that the fore fathers of the petitioners as well as the vendor of the respondent no.7 had executed a partition deed on June 20, 1962.

Parties had resolved that the pathway along the north-south side of plot no. 3507/4746, pertaining to Khatian no. 1455/1 in mouza Gholepukuria, J.L. no. 134, would be used by the parties and shall always remain a pathway.

It is contended by the petitioners that the respondent no.7 was disturbing the petitioners and other villagers who were using the said pathway.

Accordingly, complaints were filed against the respondent no.7 before the concerned Block Development Officer with the allegation of disturbance, encroachment and attempts to raise a construction over the pathway. Title Suit no. 175 of 2022 for declaration and for permanent injunction was also filed. The suit is pending. An application for injunction is also pending.

The petitioners submit that the cause of action in the suit is with regard to the alleged encroachment of the pathway, but the writ petition has been filed challenging the permission for construction granted by the panchayat authorities in respect of an undivided plot.

Mr. Mukherjee, learned advocate for the respondent no.7 submits, that there was an amicable partition as pleaded in paragraph 4 of the writ petition. That the construction is being raised strictly in accordance with the plan and within the demarcated portion of the said respondent. It is also submitted that the dispute with regard to the boundary of the area over which the construction is being made and the allegation of encroachment must be decided in the civil suit. The panchayat

authorities cannot be directed to intervene in the matter.

From paragraph 7 of the plaint, it appears that the allegation is with regard to encroachment of the pathway.

Prayer for cancellation of the sanction, in the opinion of the Court, can only be allowed after the civil court comes to a finding that the construction had encroached the pathway. Such declaration has to be given by the civil court before the authority is directed to cancel the approval granted to the building plan.

The petitioners are at liberty to approach the civil court by filing appropriate applications for local inspection/investigation in order to ascertain the exact position of the pathway and the building and also pray for injunction. Such issues have to be decided on evidence by the civil court upon contest and strictly in accordance with law.

However, it is made clear that the panchayat authorities shall ensure that the respondent no.7 constructs strictly in accordance with the plan. If any diversion or deviation from the plan and the building rules is detected, steps shall be taken in accordance with law.

If the petitioners are successful in the civil suit, the petitioners shall be at liberty to pray for

cancellation of the sanction and also for removal of any construction from the alleged pathway. The civil court is competent to pass mandatory directions as well.

The issue of cancellation of the plan can only be decided when the civil court finds that the sanction was granted to the respondent no.7 by the panchayat authorities on a misrepresentation that the area over which the respondent no.7 sought to raise their construction included the pathway. The panchayat authorities cannot cancel the sanction once granted, unless encroachment is proved.

The Panchayat Act does not have any specific provision with regard to cancellation of sanction. Thus, only when the civil court decides that there had been encroachment over the pathway and the sanctioned plan extended beyond the demarcated portion belonging to the respondent no.7 and over the pathway, the plan can be cancelled on the grounds of fraud or mis-representation.

The writ petition is disposed of.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)