

21-11-2022
Item No.14
Subrata
Bhattacharyya

IN THE HIGH COURT AT CALCUTTA
Constitutional writ Jurisdiction
Appellate Side

WPA No.24466 of 2022
Amal Dey @ Amal Kumar Dey
-vs-
The State of West Bengal & Ors.

Mr. Imtiaz Ahmed
Mr. Ghazala Firdaus
Sk. Saidullah
Ms. Smita Saha
Mr. Mithun Mondal ...for the petitioner

Mr. Tarun Kumar ghosh
Ms. Anita Deb Jana ...for the State

Affidavit of service is taken on record.

It appears that the eighth and ninth respondents could not be located. Whereas, from the police report it appears that the eighth and ninth respondents contested the proceedings under section 144(2) CrPC.

It also appears that the learned Magistrate had directed the police authorities to cause an inquiry with regard to the dispute between the petitioner and the said respondents, arising out of the alleged construction of the said respondents.

It is alleged that a construction was going on at the instance of the eighth and ninth respondents on a plot adjacent to the land of the petitioner. Upon making an inquiry, the police authorities filed a report being Chanditala non-cognizable report no.1571 of 2022 under the provisions of section 107/116(c) CrPC. Thus, it does not appear to the court that the eighth and ninth respondents were not available in the area. In any event as this court is not

inclined to pass any mandatory directions prejudicial to the interest of the said respondents, the writ petition is taken up for hearing in their absence. They shall get adequate opportunity to substantiate their case before the concerned authorities on the basis of the directions to be passed hereunder.

The specific allegation of the petitioner is that the private respondents have been raising a construction on an adjacent plot without leaving the mandatory open spaces required to be maintained as per the building rules. Further allegation is that the construction by the said respondents were in deviation from the approved plan and had extended beyond the permissible limit. A representation was made before the Pradhan, Garalgacha Gram Panchayat, the same is yet to be disposed of.

Under the circumstances, the permission-granting authority, i.e. the Goralgacha Gram Panchayat, shall dispose of the representation dated August 15, 2022 by adhering to the following procedure.

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondents no.8 and 9. An advance notice of the inspection shall be served upon the petitioner and the respondents no.8 and 9 and all other interested parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.
- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and had been continuing, the authorities may take such interim measures by stopping such construction.
- c) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of

unauthorized construction, if any.

- d) Such report shall be handed over to the parties. The question of right, title and possession shall not be decided by the panchayat authorities.
- e) A hearing shall be given to the petitioner and the respondents no.8 and 9. 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. All points raised by either party, will be decided.
- f) 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 Section 23(5) of the West Bengal Panchayat Act, 1973.

The court has not gone into the merits of the claims of the petitioner and the issues involved shall be decided independently.

The entire exercise shall be completed within a period of four months from date of communication of this order.

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]

