

12.12.2022
Sl.No.3
sn

WPA 25018 of 2022

Debashis Sardar
Vs.
The State of West Bengal & Ors.

Mr. Sudarshan Ghosh
..for the petitioner

Mr.Asish Guha
Mr. Jayak Gupta
..for the State

Mr. G.K. Das
Ms. Swati Mondal
..for the respdts8&9

Despite service, none appears on behalf of the panchayat authorities.

The report of the Block Land & Land Reforms Officer, Joynagar-II, South 24 Parganas is taken on record. It appears that as per LR records, plot nos. 72 and 73 of mouza Gangapur have been recorded as Bagan and Sali respectively. Plot no. 123 has been classified as Khal. Plot no.123 has vested to the State. The said plots fall within Moydah Gram Panchayat.

The specific contention of the Block Land & Land Reforms Officer is that the lands in question were not converted before change of user.

Learned advocate for the petitioner submits that without any conversion of user, the panchayat authorities could not have permitted the construction of a residential house on the said lands.

Learned advocate for the respondent nos. 8&9 submits that as per the classification in the RS record of rights, the construction was permissible. The subsequent change in the classification of land to Bagan or Sali, would not require a separate order of conversion. He submits that the permission was granted by the panchayat authorities in 2014 and the belated complaint by the petitioner was not only mala fide, but was filed with an ulterior motive.

The petitioner had approached the Moydah Gram Panchayat by filing a complaint. The allegation was that the construction on plot no. 123 was not legal as the said plot had been classified as a 'Khal'. The Block Land & Land Reforms Officer categorically stated that plot no. 123 had vested to the State and was recorded as a 'Khal'.

Under such circumstances, this writ petition is disposed of with a direction upon the Moydah Gram Panchayat to consider the complaint of the petitioner and pass a reasoned order indicating whether the panchayat authorities had the competence under the law to issue permission for construction without any conversion of plot Nos. 72, 73 and 123 of mouza. Rule 26 of the West Bengal Panchayat (Gram Panchayat Administration) Rules 2004 categorically states that the panchayat authorities could not allow permission for

construction on any land, except a homestead land. The issue is whether the permission that was allegedly granted in 2014 was authorized by law. Whether plot nos. 72, 73 and 123 of mouza Gangapur had always been classified as Bagan, Sali and Khal, must be looked into. Thereafter a decision shall be taken with regard to the alleged sanction and subsequent construction. Upon such finding, the fate of the permission to construct allegedly granted, shall be decided by the authorities.

This order shall not preclude the petitioner from taking any other step, in accordance with law. There is a specific finding that plot No.123 had vested to the state.

This writ petition is disposed of without going into the merits. All the issues raised, shall be decided by the authority upon hearing all the parties. The reasoned order shall be communicated to the parties within four months from date of communication of this order.

This writ petition is disposed of.

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

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

(Shampa Sarkar, J.)