

22.02.2023
Sl. No.25(DL)
srm

W.P.A. No. 2303 of 2023

Sri Swapan Pradhan

Versus

The State of West Bengal & Ors.

Mr. Saibal Acharyya,
Mr. Pradip Paul

....for the Petitioner.

Mr. Raja Saha,
Ms. Tanusri Chanda

...for the State-respondents.

Mr. Subhabrata Datta,
Mr. Debashis Sarkar

...for the Respondent No.7/Pradhan.

Mr. Aranya Saha

...for the Respondent Nos.8 & 9.

Mr. Gourab Ghosh

...for the Respondent Nos.10 to 14.

Affidavit-of-service is taken on record.

The petitioner has alleged that the panchayat authorities had illegally issued the notice dated January 20, 2023 asking the petitioner to stop the construction of his dwelling house. Such notice was issued upon receiving a complaint from the respondent Nos.8 and 9 who claim to be co-sharers.

The learned Advocate for the petitioner submits that the construction was raised as per the sanctioned plan. It is

submitted that when the panchayat authorities had granted permission to other co-sharers, some of whom had raised their respective constructions on the basis of an oral amicable settlement of partition of the property, the petitioner could not be discriminated upon.

The learned Advocate for the respondent Nos.10 to 14 supports the petitioner. They are also co-sharers. They agree that there was an oral amicable settlement with regard to the partition of the property in question and the parties had demarcated their respective shares which they were possessing. Even the respondent Nos.8 and 9 were parties to such amicable, oral partition.

The learned Advocate for the respondent Nos.8 and 9 submits that the petitioner was constructing on a plot which was under the possession of the said respondents. The factum of oral partition has been denied.

Mr. Datta, learned Advocate for the Pradhan submits that the cause of action of the writ petition does not survive as another notice had been issued asking the petitioner to show cause why the sanctioned plan should not be withdrawn.

It appears that the Pradhan of Brajalalpur Gram Panchayat, Purba Medinipur has issued a notice dated February 8, 2023 asking the petitioner to show cause as to

why the plan sanctioned in favour of the petitioner shall not be recalled or withdrawn in view of the fact that the petitioner had given incorrect information.

The Court is of the view that the authority who had granted the plan may seek necessary clarifications and answers, if irregularities are detected and the information given by a party who seeks permission to construct was found to be erroneous. Apart from the respondent Nos.8 and 9, the petitioner and other co-sharers accept the fact of oral amicable partition and demarcation. They also accept that the constructions of the co-sharers have been made on their demarcated areas. That the petitioner had started construction on the basis of the sanctioned plan.

However, whether the petitioner was constructing on the basis of the plan or had extended the construction beyond the plan and over the property of the respondent Nos.8 and 9, has to be factually ascertained.

Having heard the learned Advocates for the respective parties, the writ petition is disposed of with a direction upon the petitioner to answer to the notice dated February 8, 2023 issued by the Pradhan within a period of two weeks. Once such reply is filed, an inspection of the entire plot shall be held by the panchayat authority with prior notice to the parties. The Block Land and Land

Reforms Officer shall provide assistance so that the demarcation of the portions of the co-sharers, who are enjoying the property on the basis of the alleged oral settlement, can be effected.

Once such demarcation is made as per the amicable settlement and on the basis of record of rights and other relevant records, the Block Land and Land Reforms Officer, Patashpur-I Block, shall prepare a report and supply the same to the parties. Submissions of all parties shall be taken into consideration. Thereafter, the gram panchayat shall decide the issue as to whether the permission could have been granted to the petitioner in terms of Section 23 of the West Bengal Panchayat Act, 1973 to raise the construction or whether the petitioner had misled the authorities and obtained the permission by fraud. If it is detected that the petitioner had obtained permission by misleading the authority or by suppression, the authority shall have the liberty to pass necessary orders.

The panchayat authorities shall also enquire as to how the respondent Nos.8 and 9 have been residing on the said plot upon raising their own construction. Whether the construction of the respondent Nos.8 and 9 was with prior permission or not, shall be determined and steps shall be

taken in accordance with law if the same is found to be without permission.

If it is found that the petitioner's construction was made as per the plan and the contention of the petitioner with regard to the oral amicable partition between the parties is found to be correct, in that event, necessary orders shall be passed allowing the petitioner to construct. If there is any deviation from the plan, steps shall be taken in accordance with law. If a boundary dispute is detected or the demarcation cannot be effected on the basis of the possession of the co-sharers and the land records, petitioners shall be relegated to a civil court.

The entire exercise shall be completed within a period of four months from the date of receipt of the reply to the notice dated February 8, 2023.

This Court has not gone into the correctness of the allegations and counter-allegations brought by the parties and the panchayat authorities shall decide the entire issue independently.

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.)