

01.03.2023
Sl. No.33(DL)
srm

W.P.A. No. 3169 of 2023

Safika Begam

Versus

The State of West Bengal & Ors.

Mr. Uday Shankar Bhattacharya,
Mr. Dilip Kumar Mondal

....for the Petitioner.

Mr. Susanta Pal,
Mr. Ananda Dulal Sarkar

...for the State-respondents.

Mr. Kamal J. Zaman,
Mr. M.K. Basar Bulbul,
Mr. Jahangir Hossain

...for the Respondent Nos.9 to 12.

Affidavit-of-service is taken on record.

The writ petition has been filed alleging that the respondent Nos.9 to 12 had constructed illegally on Plot Nos.501 and 560 of mouza Kharharai, District-Hooghly. According to the petitioner, the said construction encroached a common passage as also the western portion of the petitioner's property.

The learned Advocate for the respondent Nos.9 to 12 submits that on the selfsame cause of action, a public interest litigation had been filed by the husband of the petitioner alleging that the respondent No.9 had started

operating a cotton yarn twisting mill, without obtaining the statutory compliances. Allegation of emission of cotton dusts resulting in a hazardous condition of the locality had been made. The Hon'ble Division Bench disposed of the said public interest litigation with a direction upon the concerned District Magistrate to decide such allegation. The allegations have been decided by the District Magistrate and found to be incorrect. According to the said respondents, on the selfsame cause of action, this writ petition has been filed.

Having perused the order of the Hon'ble Division Bench and the decision of the District Magistrate, this Court finds that the issue that was decided by the District Magistrate was the allegation of running of cotton yarn factory without permission from the local bodies and by encroaching the common passage.

The allegation of encroachment of the land of the petitioner and encroachment of the common passage, cannot be decided by the panchayat authorities. There are civil disputes, which have to be decided by a civil court. However, whether the dwelling house constructed by the respondent Nos.9 to 12 had been sanctioned by the concerned gram panchayat in terms of Section 23 of the West Bengal Panchayat Act, 1973 can be looked into and

decided by the permission granting authority in accordance with law.

Under such circumstances, the writ petition is disposed of with liberty to the petitioner to approach the permission granting authority by filing a detailed representation indicating her objection to the construction. Vague and omnibus allegations shall not be permitted. If such representation is filed, the permission granting authority shall dispose of the representation upon hearing all the parties. A reasoned order shall be passed and communicated. Steps shall be taken in accordance with law.

Needless to mention, the question of environmental hazard, encroachment and construction over the alleged common passage, shall not be decided. The issues that shall be decided would be, whether the construction of the respondent Nos.9 to 12 was sanctioned by the permission granting authority or whether the construction was beyond the sanction granted by the permission granting authority or whether the rules and regulations of the Panchayat Act, had been followed.

The entire exercise shall be completed within a period of four months from the date of receipt of the petitioner's application.

A copy of the writ petition along with a server copy of this order be served upon the Secretary, Begampur Gram Panchayat, Hooghly.

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.)