

ML 24
13.03.2023
Court. No. 19
GB

WPA 3338 of 2023

Kartick Chandra Dutta
VS
The State of West Bengal & Ors.

Mr. Pratip Kumar Chatterjee

...for the Petitioner.

*Mr. Jahar Lal De,
Mr. Rudranil De*

...for the State.

*Mr. Sabyasachi Mukhopadhyay,
Ms. Koushikee Banerjee*

...for the Respondent No.10.

Affidavit-of-service filed in Court today, be kept with the record.

The petitioner is attempting to build up a new cause of action contrary to the earlier stand taken in the previous rounds of litigation. A writ petition had been filed alleging encroachment and unauthorized construction by the respondent no.10 without any permission from the concerned gram panchayat. The writ Court had directed the gram panchayat to make an inspection and pass necessary orders. Accordingly, the panchayat found that no sanction had been granted and referred the matter to the Sub-Divisional Officer. At that juncture an appeal was preferred by the respondent no.10 before the Hon'ble Division Bench of this Court. The Division Bench, prima facie, came to the conclusion that there was a sanction plan. However, with regard to the allegation of the petitioner, who was a respondent in the appeal, further liberty was given to the

petitioner to approach the Block Development Officer with his grievances. The Block Development Officer was further directed to make an inspection and forward the findings to the Sub-Divisional Officer. The Sub-Divisional Officer upon perusal of the report of the Block Development Officer found encroachment about 168 sq. ft. of Plot No.5020 of Mouza-Kandra. Plot No.5020 belongs to the petitioner.

At this juncture, the petitioner wants to improve the case by submitting that the findings of the Sub-Divisional Officer was inadequate and incomplete. Apart from coming to a decision with regard to the alleged encroachment, the Sub-Divisional Officer was required to initiate proceedings for demolition in terms of Section 23(5) of the West Bengal Panchayat Act, 1973. Further allegation has now been made that the minimum side spaces which were required to be kept between the two plots of land, namely, 5018 and 5020 had not been maintained.

In the opinion of the Court, the findings of encroachment by the Block Development Officer and the Sub-Divisional Officer can only serve as a supporting evidence in the title suit filed by the petitioner being Title Suit No.44 of 2019. The final decision has to be taken by the civil court. However, the issue as to whether the construction of the respondent no.10 has been made strictly in accordance with the sanctioned plan and in accordance with the rules will have to be decided by the appropriate authorities at appropriate stages under Section 23 of the West Bengal

Panchayat Act, 1973. The pleadings and the records do not reveal that any such plea had ever been taken by the petitioner. Admittedly, there is a sanction. The finding of encroachment can be put to use by the petitioner in the civil proceeding. If the petitioner now alleges that the plan had been deviated from or adequate side spaces had not been maintained and the building rules had been violated, the same give rise to a new cause of action for which the petitioner can always approach the panchayat authorities in accordance with law.

If such representation is filed, the same shall be disposed of in accordance with law upon providing an opportunity of hearing to the parties. The issues to be decided would be whether the construction of the respondent no.10 has been made strictly in accordance with the sanction granted and whether the building rules with regard to the maintenance of side spaces have been complied with or not. A reasoned order shall be passed by the authority and steps shall be taken in accordance with law if there are any violations. An inspection shall precede in hearing.

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.)