

29.3.2023
Ct.19/sl.15
sn

W.P.A. 5832 of 2023

Sk. Atiyar Rahaman

Vs.

The State of West Bengal & Ors.

Mr. Maidul Islam Kayal

Mr. Sumit Naskar

..for the petitioner

Ms. Sipra Majumder

Ms. Sangeeta Roy

..for the State

Mr. Ratul Biswas

Mr. Koushik Chowdhury

Ms. Soumoyadipa Kanu

..for the respdts.11-12

The petitioner alleges that the respondent nos. 11 to 14 have raised a construction on LR Dag No. 1074 of mouza Joychandipur without any permission from the panchayat authorities. Further allegation is that one of the members of Patherberia Joychandipur Gram panchayat had also constructed a concrete road through the aforementioned land.

The petitioner claims right, title and interest in respect of the said land on which the construction of the road and a room has been made.

The police report indicates that both the petitioner and the respondent nos. 11 to 14 own some portion of the aforementioned land. As there was no demarcation, a dispute had arisen earlier which resulted in filing of a proceeding under Section 144(2) of the Code of Criminal Procedure before the 1st Executive Magistrate, Alipore, South 24 Parganas.

The police authorities submitted a prosecution under Section 107 of the Code of Criminal Procedure against the respondent nos. 11 to 13. A strong vigil is being maintained to prevent commission of any further offence.

Although the dispute with regard to the right, title and interest in respect of the land in question, the same cannot be decided either by this Court or by the panchayat authorities. However, whether construction of the respondent nos. 11 to 14 as also of the petitioner had been raised with the permission from the concerned gram panchayat can be determined by the gram panchayat. No one is entitled to raise any construction on any land within the jurisdiction of the gram panchayat, without due permission/sanction from the authority.

The panchayat authorities are also not entitled to construct any road or pathway through any private land without the following the provisions of Section 44 of the West Bengal Panchayat Act, 1973.

Under such circumstances, this writ petition is disposed of with a direction upon the Patharberia Joychandipur Gram Panchayat to dispose of the representation of the petitioner, which is Annexure P/4 at page 35 of the writ petition, in accordance with law.

An inspection of the construction of the respondent nos.11-14 shall be held in presence of the parties. A report of such inspection shall be handed over to the parties and the parties shall be entitled to respond to such report. If any construction is found to have been raised without any permission, necessary steps shall be taken in accordance with the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

If it is found that a village road or a pathway had been constructed through the land of the petitioner by the panchayat authority, steps under Section 44 of the West Bengal Panchayat Act, 1973 shall be taken. In both such cases, a hearing shall be given to the parties and a reasoned order shall be passed and communicated to all.

This Court has not gone into the merits of the claims and counterclaims of the parties.

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

This writ petition is disposed of.

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

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

(Shampa Sarkar, J.)