

Item No.9
21.03.2023
Court. No. 19
GB

WPA 5982 of 2023

Ajit Maity
Vs
The State of West Bengal & Ors.

Mr. Ashok Kumar Jha

...for the Petitioner.

*Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata*

...for the State.

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

None appears on behalf of the panchayat authorities. The respondent nos.8 and 9 have refused service. The postal articles have been filed along with the affidavit-of-service. Refusal is good service. The matter is taken up in the absence of the respondent nos.8 and 9.

The petitioner alleges that the respondent nos.8 and 9 have raised a construction on Dag No.3868 of Mouza-Bartna without any permission. It is also submitted that a partition suit is pending between the parties and an ad interim order of injunction had been passed by the learned Civil Judge (Senior Division), 2nd Court at Contai on December 9, 2020. The issues in the the civil suit being Title Suit No.297 of 2020, is not relevant for the purpose of disposal of the writ petition.

The petitioner alleges that the panchayat authorities have failed and neglected to take steps in stopping such

construction by the respondents, although there is an order of injunction passed by a competent civil court.

Such issue of enforcement of the order of injunction has to be decided by the learned civil court and the petitioner is at liberty to approach the civil court for police help and any other relief in this regard. The only issue that the panchayat authorities can decide is whether any construction was permitted by the said authority in favour of the respondent nos.8 and 9 on the aforementioned plot of land and a plan to that effect had been sanctioned. In any event, as there is a subsisting order of status quo, the parties are not entitled to raise further construction.

Under such circumstances, the petitioner is granted liberty to approach the concerned gram panchayat to find out whether any permission had been granted in favour of the said respondents to raise any construction. If no permission had been granted, the panchayat authorities are entitled to act and proceed in accordance with law, but subject to the orders that may be passed from time to time by the civil court. The ad interim order passed by the civil court has restrained all parties from changing the nature and character of the property in question which includes the alleged construction. The petitioner shall be at liberty to approach the civil court for necessary modification, variation or clarification of the said order, if it is found that the construction of the said respondents, is without any valid permission or plan.

This Court has not gone into the merits of the allegation made by the petitioner.

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.)