

01.02.2023
Court No. 19
Item no.04
CP

W.P.A. No. 6790 of 2022

Sri Rabindra Nath Gharui

Vs.

The State of West Bengal & Ors.

Mr. Dyutiman Banerjee

...for the petitioner.

Mr. Sandip Das

...for the respondent no. 6.

The petitioner alleges that the respondent no. 6 has raised an unauthorized construction on Plot No. 173 corresponding to Khatian No. 368. The land is allegedly recorded in the name of the petitioner and his brother. The petitioner submits that Title Suit No. 141 of 2020 is pending before the learned Civil Judge (Junior Division), Kakdwip, South 24 Parganas. The application for injunction was disposed of directing the parties to maintain status quo over the suit plot till the disposal of the suit.

Further allegation is that in violation of the order of status quo, construction was raised by the respondent No.6. The petitioner also contends that the panchayat authorities did not take any steps in spite of the fact that an objection was filed before the authority alleging illegal and unauthorized construction.

Mr. Das, learned advocate appearing on behalf of the respondent no. 6, submits that if the petitioner had any allegation with regard to violation of the order of injunction, the appropriate remedy of the petitioner would be before the learned civil court. The petitioner has already filed an application under Order 39 Rule 2A of the CPC, which is pending adjudication. Parallel proceedings should not be allowed. He further submits that no new construction had been raised but some repairing work had been done on an existing structure.

The law is well settled that adjudication of the question of unauthorized construction and demolition of such structure has to be done by the permission granting authority.

Under such circumstances, without going into the merits of the claim of the petitioner, the writ petition is disposed of with a direction upon the Digambarpur Gram Panchayat to treat the writ petition as a representation and dispose of the same in accordance with law. While doing so, the following procedure shall be adopted:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no. 6. An advance notice of the inspection shall be served upon the petitioner and the

respondent no. 6 and on all other interested parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.

- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and was continuing, the authorities may take interim measures by stopping such construction.
- c) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.
- d) Such report shall be handed over to the parties.
- e) A hearing shall be given to the petitioner and the respondent no. 6. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority. All points raised by either party, will be decided.
- f) A reasoned order shall be passed and communicated to the parties. On the basis

of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of Section 23(5) of the West Bengal Panchayat Act.

If the Sub-Divisional officer, after coming to a finding that the construction of the respondent no. 6 was unauthorized, is unable to implement the order of demolition due to any order passed by the learned civil court, the petitioner shall approach the civil court for necessary modification, variation and clarification of the order of status quo and, thereafter, the authority shall act and proceed in accordance with law.

The court has not gone into the merits of the claims of the parties.

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

The disputes with regard to title, possession and boundary etc., shall not be decided by the panchayat authorities.

The issues which are pending before the civil court have not been decided in this proceeding.

A copy of the writ petition along with a server copy of this order be served upon the concerned

gram panchayat for necessary compliance 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.)