

Item No.14
24.04.2023
Court. No. 19
GB

WPA 8076 of 2023

Abdus Chalam Molla
Vs
The State of West Bengal & Ors.

Mr. Lakshminath Bhattacharya

...for the Petitioner.

*Mr. Bibek Jyoti Basu,
Mr. Uttam Kr. De,
Ms. Ankita Mukherjee*

...for the State.

Mr. Sanatan Panja

...for the Respondent No.10.

Mr. Pankaj Halder

...for the Respondent No.11.

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

The question of construction on an undivided land cannot be gone into in this proceeding. The petitioner and the respondent no.11 are brothers. Their late father had executed a deed of gift (Nirupam Patra) in favour of his sons, daughters and wife being deed no.7293 of 1987. By virtue of the said deed, the areas allotted by the father to each of his sons, daughters and his wife had been delineated. Accordingly, the petitioner as also the respondent no.11 and others acquired title over 11 decimals in the property situated at L.R. Plot No.252 corresponding to L.R. Khatian No.614 of Mouza-Uttar Gangadharpur.

The petitioner contends that the respondent no.11 raised a construction in deviation from the plan and over the undemarcated land, thereby, encroaching a portion of the land belonging to him.

Such allegation is disputed by the respondent no.11. The respondent no.11 has produced a plan sanctioned by the concerned panchayat authorities. Further reference is made to a document prepared by the gram panchayat indicating that an inspection revealed that the construction was strictly in accordance with the plan.

Mr. Bhattacharya submits that the petitioner should not have constructed without his consent as the entire plot is still undivided and the respective 11 decimals of land which their father gifted to them, had not been demarcated.

The deed executed by the father indicates the boundaries. However, if the petitioner is aggrieved by any encroachment of his portion and wants apportionment of the respective shares, the remedy of the petitioner would be to file a civil suit for partition. It is settled law that every co-sharer has a right in respect of every inch of undivided property. In this case, the father had mentioned the boundaries of each of the shares. The record of rights which have been produced indicate that the share of the respondent no.11 on the land which has been recorded as 'Bastu' had been entered. In any event, any construction on an undivided property is without any equity. It also appears that others have already raised their constructions, but the petitioner did not object to the same.

Under such circumstances, only the allegation of construction beyond the sanction granted, shall be subject to determination by the gram panchayat. The petitioner is at liberty to approach the gram panchayat for necessary steps in

this regard. If any complaint is filed, the same shall be disposed of in accordance with law. The earlier decision that was taken by the gram panchayat with regard to the allegation of construction being as per the sanction plan was *ex parte*, and issued without any information to the petitioner. The same shall not be relied upon by the authority.

The contention of the learned advocate for the respondent no.11 that the petitioner had also raised an unauthorized construction, cannot be decided in this proceeding. The respondent no.11 is always at liberty to proceed in accordance with law and approach the panchayat authorities for necessary steps.

The petitioner will file his objections with the details of the alleged deviation, within a period of two weeks. The panchayat authority will act and proceed 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 nos.10 and 11. An advance notice of the inspection shall be served upon the petitioner and the respondent no.4 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 any sanction and was continuing, the authorities may take such interim measures by stopping such construction.
- c) A 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. The question of title, possession and boundary dispute etc. shall not be decided by the panchayat authorities. The questions to be decided by the panchayat authorities would be whether the construction had been made without any permission or in violation of the building rules.
- e) A hearing shall be given to the petitioner and the respondent nos.10 and 11. The parties must also be allowed to furnish their written objection/version to the 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, 1973.

The court has not gone into the merits of the claims of the petitioner and the issues involved shall be decided independently.

The entire exercise shall be completed within a period of four months from the date of receipt of the objection.

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.)