

May 10, 2023
Sl. No.15
Court No.19
s.biswas

WPA 9142 of 2023

Gokul Sadhukhan

vs.

The State of West Bengal and others

Mr. Keshab Chandra Das

Ms. Aparajita Mondal

Mr. Biplab Adak

... for the petitioner

Mr. Asish Kumar Guha

Mr. Jayak Kumar Gupta

... for the State

Affidavit of service filed by the petitioner is taken on record.

Despite service, none appears on behalf of the respondent nos.9 and 10.

As the Court is not inclined to pass any mandatory direction as prayed for, but deems it fit to relegate the matter to the permission granting authority for determination of the allegation of unauthorized construction, the writ petition is taken up in the absence of the respondent nos.9 and 10.

The petitioner alleges that the respondent nos.9 and 10, who are the co-sharers along with the petitioner and some others, started a construction on L.R. Plot Nos.1428 and 1429 of Mouza-Joynagar.

The issue of construction on the alleged undivided property cannot be gone into by the panchayat authority. It is well settled that every co-sharer has a right over every inch of the property, until such property is partitioned by metes and

bounds. Any construction on an undivided property, is subject to partition and no person can claim equity. However, if the respondent nos.9 and 10 are allegedly constructing on such an undivided property without any permission from the permission granting authority, the authority is bound to take necessary steps in accordance with law and ensure that no construction would be allowed in contravention of law.

A representation was filed by the petitioner before the Baligari-I Gram Panchayat for necessary steps being Annexure P/2 at page 13 of the writ petition.

The Baligari-I Gram Panchayat authority is directed to consider the said representation of the petitioner 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.9 and 10. An advance notice of the inspection shall be served upon the petitioner and the respondent nos.9 and 10 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) A report of such inspection with the details shall be prepared along with a sketch map, indicating the extent and nature of unauthorized construction, if any.
- c) Such report shall be handed over to the parties. The question of right, title, interest, possession and boundary dispute etc. shall not be decided by the panchayat authorities. The only issue to be decided would be whether the construction was in accordance with law and upon obtaining proper permission.
- d) A hearing shall be given to the petitioner and the respondent nos.9 and 10 and other concerned persons. 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.
- e) 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 accordance with
the relevant law.

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

(Shampa Sarkar, J.)