

5.1.2023
Sl.No.2/sn

WPA 7670 of 2018

**Lakshmi Sadhukhan & Anr.
Vs.
The State of West Bengal & Ors.**

**Mr. Koushik Chandra Gupta
..for the petitioners
Mr. Nilotpai Chowdhury
Mr. Prabir Bera
Mr. Deepak Sarma
..for the respdts.4-6**

**Ms. Manjuli Chowdhury
Ms. Mekhla Sinha
..for the Howrah Zilla Parishad**

The dispute in this writ petition, is with regard to the construction which is allegedly being raised by the respondent nos.4 to 6 on dag no.742 of mouza Manikpur. The said plot is adjacent to the plot of the petitioners. According to the petitioners, the construction is without any sanction and has also encroached on a portion of the land of the petitioners. Aggrieved by such encroachment, Title Suit No. 47 of 2007 was filed before the learned Civil Judge, Junior Division, 5th Court at Howrah. The learned Civil Court had passed an order of injunction restraining the construction on 'B' schedule property(land of the petitioners). However, the Court allowed the construction by the respondent nos. 4 to 6 on their own land.

This writ petition has been filed for a direction upon the competent authority to take steps with regard to the alleged construction as no

sanction/permission had been obtained from the permission granting authority. When the writ petition was first moved, status quo was directed by a co-ordinate Bench of this Court and a learned Special Officer was appointed to file a report upon making an inspection. The learned special officer has since been discharged.

The respondent nos. 4 to 6 was given an opportunity by this Court to come up with all documents in support of their construction.

Today, learned advocate for the respondent nos. 4 to 6 has submitted a draft plan which was prepared by the said respondents on January 18, 2018. Learned advocate could not satisfy the Court as to whether such plan had been submitted before the permission granting authority for necessary permission to construct.

The issue is whether the construction could be permitted by the respondent nos. 4 to 6 without any sanction. The law is clear. No construction can be permitted without permission from the permission granting authority as per Section 23 of the West Bengal Panchayat Act, 1973, read with the rules.

The confusion now arises as to whether the Manikpur Gram Panchayat or the Howrah Zilla Parishad would be the competent authority to grant permission.

The petitioners will ascertain who would be the appropriate permission granting authority in this regard in terms of Section 23 of the West Bengal Panchayat Act, 1973 and Rule 27 and 28 of the West Bengal Panchayat(Gram Panchayat Administration) Rules, 2004. Thereafter, a complaint shall be filed before the permission granting authority with regard to the alleged construction. Such application shall be disposed of by the permission granting authority in accordance with law upon hearing the parties. An inspection shall be held in presence of the parties. A copy of the inspection report shall be given to the parties. A reasoned order shall be passed and communicated to all. The exercise shall be completed within three months from date of receipt of petitioner's representation.

As the construction of the respondents is without permission, necessary steps must be taken by the permission granting authority as per law. The permission granting authority shall ensure that the ongoing construction, if any, is stopped immediately.

There is a subsisting order of status quo passed by a co-ordinate Bench of this Court which shall prevail, till the decision is arrived at by the authority.

As there is an order passed by the competent civil court allowing construction by the respondent

nos. 4 to 6 on their own land, the petitioners must approach the competent civil court for clarification/modification and or variation of the order of injunction. Upon such exercise being completed, the permission granting authority shall be approached for further implementation of the reasoned order, if the authorities comes to the final conclusion that the construction was illegal and unauthorized.

The entire exercise shall be completed within a period of four weeks 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 to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)