

26.04.2023
Court No. 19
Item no.39
CP

WPA No. 9618 of 2023

Angshuman Mondal
Vs.
The State of West Bengal & Ors.

Mr. Sounak Bhattacharya
Mr. Chandra Nath Sarkar
Mr. Sounak Mandal

....for the petitioner.

Mr. Biswabrata Basu Mallick
Mr. K. M. Hossain
Mr. Biman Halder

.....for the respondent no. 8.

Mr. Tapas Kr. Mondal

.....for the respondent nos. 2, 3 & 4.

The petitioner alleges that the respondent no. 8 had raised a construction on L.R. Dag No. 2,3 and 4, corresponding to L.R. Khatian No. 560/1 of Mouza – Sherhangampur without any permission from the South 24-Parganas Zilla Parishad.

Mr. Basu Mallick, learned advocate appearing on behalf of the respondent no. 8, submits that the petitioner has filed a partition suit against the said respondent and the learned court below permitted construction, subject to the condition that if in future the said respondent fails to prove his title, no equity could be claimed.

Although the construction over an undivided property is subject to a final decree in a partition suit and no party can claim equity in respect of any construction, the fact remains that any construction raised by any person has to be first permitted by the permission granting authority.

Mr. Mondal, learned advocate appearing for the South 24-Parganas Zilla Parishad, has submitted that pursuant to the complaint lodged by the petitioner, a notice has been issued.

The petitioner submits that the zilla parishad is not taking immediate steps with regard to disposal of the complaint. Hence, this court has been approached.

The writ court cannot go into the disputed questions of fact. The permission granting authority should decide the issue of unauthorized construction. Hence, the writ petition is disposed of with a direction upon the South 24-Parganas Zilla Parishad to dispose of the representations of the petitioner which is Annexure P-5 at page 42 of the writ petition, in accordance with law. While doing so, the authorities will follow the procedure stated hereinbelow:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no. 8. An

advance notice of the inspection shall be served upon the petitioner and the respondent no. 8 and 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 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.
- e) A hearing shall be given to the petitioner and the respondent no. 8. The application filed by the respondent no. 8 will also be considered at the time of hearing. 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 accordance with law.

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

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

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

A copy of the writ petition along with a server copy of this order be served upon the concerned permission granting authority 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.)