

May 8, 2023
Sl. No. 11
Court No.19
s.biswas

WPA 9864 of 2023

Babar Ali

vs.

The State of West Bengal and others

Mr. Arunava Ganguly

... for the petitioner

Mr. Debjit Mukherjee

Ms. Susmita Chatterjee

... for the State

Mr. Ramij Munsi

Ms. Champa Pal

... for the respondent nos.4 & 5

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

The petitioner alleges that under the garb of repairing, the portion occupied by the respondent nos.7 and 8 in a joint dwelling house situated at plot no.818 of Mouza-Champahati, the said respondents had raised an unauthorised construction by constructing new rooms.

Learned advocate for the petitioner alleges that the construction on the undivided property could not have been raised in view of the order passed by the learned Civil Court on October 4, 2021 in Title Suit No.99 of 2012. The suit is for partition and injunction. The respondent nos.7 and 8 had filed the suit.

By an order dated October 4, 2021, the learned Civil Court allowed the said respondents to repair the dilapidated structures in the portion occupied by them, without raising any new structure. Such

order was passed on the basis of the report of the learned advocate Commissioner indicating that the dwelling house was in a bad shape and needed immediate repairs. The Court held that it was the duty of the Court to allow the party to repair, till the litigation was complete. Specific direction was that only the dilapidated portion of the suit property could be repaired, so that the same remains habitable and no new construction could be made, under the garb of repairing. The Court further directed that no equity could be claimed by the plaintiffs in the suit, in respect of the construction.

The writ petition is disposed of with liberty to the petitioner to approach the learned Civil Court with his allegation that the construction was beyond the permissible repair and amounted to a new construction.

If such application is filed, the same shall be disposed of strictly in accordance with law.

This Court has not expressed any opinion on the allegations made and directs that the learned Civil Court shall proceed in accordance with law.

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.)

