

16.05.2023
Sl. No.8(DL)
srm

W.P.A. No. 10593 of 2023
Subha Prakash Majumdar
Versus
The State of West Bengal & Ors.

Mr. Siddhartha Sarkar,
Mr. Akash Ghosh,
Mr. Prodipto Ghosh

....for the Petitioner.

Mr. Tapas Kumar Adhikari,
Mr. Benazir Ahmed

...for the State-respondents.

Mr. Ramkrishna Bhattacharyya,
Mr. Kaushik Choudhury

...for the Respondent Nos.7 and 8.

Despite service on two occasions, none appears on behalf of the panchayat authorities. The service of notice is taken on record.

The petitioner alleges that the respondent Nos.7 and 8 had raised a construction on a plot adjacent to Dag No.814 of mouza Harirampur, without any sanction and without leaving the mandatory spaces between the petitioner's house and the alleged construction. Such construction, according to the petitioner, was contrary to the building rules.

Reliance has been placed on some documents issued by the Pradhan of Bagichapur Gram Panchayat, Dakshin Dinajpur, which includes an answer to the queries made by the petitioner under the Right to Information Act. As per the intimation given by the Pradhan on March 31, 2015, it appears that the construction was without sanction and the minimum spaces required to be kept vacant had been utilized for such construction.

Further reliance is placed on a stop work notice issued by the panchayat authorities. It further appears that the respondent Nos.7 and 8 had written a letter to the Pradhan indicating that the minimum statutory space was not required to be kept vacant on the basis of an understanding between the petitioner and the said respondents.

The learned Advocate for the respondent Nos.7 and 8 questions the maintainability of the writ petition on the ground that on the selfsame cause of action, a civil suit is pending. It is further submitted that an order of injunction had been passed and the said respondents have not acted in violation thereof.

Reliance is placed on a communication made by the Block Development Officer, Harirampur Block, indicating

that the matter was civil in nature and hence must be decided by the appropriate civil court.

The Court agrees with the learned Advocate for the respondent Nos.7 and 8 to the extent that the issue of encroachment, claim to right, title and interest of the 'kha' schedule property in the suit and the other prayers relating to the boundary dispute and enjoyment of the property in question, must be decided by the learned civil court. The Block Development Officer was also correct to the extent that the clarifications sought for by the Pradhan with regard to demarcation, measurement, etc. was actually a boundary dispute, which should be decided by the learned civil court.

However, Section 23 of the West Bengal Panchayat Act, 1973 casts a duty of every person who wishes to raise any construction after the promulgation of the West Bengal Panchayat Act, 1973 and the enforcement of the rules framed thereunder, to take permission for construction.

The learned Advocate for the respondent Nos.7 and 8 has produced documents to show that the application for permission had been filed along with a sketch plan. The prescribed fees had been deposited. This Court is, however, unable to ascertain whether the permission was ultimately granted or not. The panchayat authorities had

informed the petitioner that the sanction had not been granted. Such intimation was sent sometime in the year 2015. Whether since then, the matter progressed further and the sanction was granted, has to be ascertained.

Under such circumstances, the writ petition is disposed of with a direction upon the Bagichapur Gram Panchaat, Dakshin Dinajpur, to dispose of the representation of the petitioner being annexure P7 at page 29 of the writ petition, in accordance with law.

While doing so, the permission granting authority shall adhere to the following procedure:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent Nos.7 and 8, with 48 hours advance notice to the petitioner and the respondent Nos.7 and 8. The age of the construction shall be detected.
- b) A report of the inspection shall be prepared along with the sketch map, indicating the extent of unauthorized construction, if any.
- c) Such report shall be handed over to the petitioner as also the respondent Nos.7 and 8.
- d) In case, it is found on preliminary inspection, that there may be reasons to believe that the construction

was without permission as also in violation of the building rules and had been continuing, the authorities may take interim measures by stopping such construction.

- e) A hearing shall be given to all the parties. 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.
- 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 the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.
- g) After the entire process is over and if the unauthorised construction is detected, the same shall be demolished in accordance with law.

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

The questions of right, title, interest, encroachment, etc. shall not be gone into. However, if it is found that the

construction of the respondent Nos.7 and 8 was contrary to the plan or contrary to the building rules which ultimately resulted in extension of the construction beyond the boundary of the said respondents, necessary steps shall be taken. The same would not be an issue of encroachment, but an issue of construction in deviation of the plan or in deviation of the building rules. Further, such finding of extension of the construction beyond the allowable limit would not *ipso facto* be a decision on the right, title and interest of the parties in respect of the said area, but a finding on fact as to the alleged deviation from the building plan.

If the authority comes to a finding of unauthorised construction, but finds it difficult to implement the order of demolition in view of the order of *status quo* passed by the learned civil court, the petitioner will be at liberty to approach the learned civil court for necessary variation, modification and/or clarification of the ad interim order.

The Court has not gone into the merits of the claims of the parties and the issues raised, shall be decided by the competent authority, independently.

A copy of the writ petition, along with a server copy of this order be served upon the Secretary, Bagichapur Gram Panchayat, Dkashin Dinajpur.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of
this order.

(Shampa Sarkar, J.)