

S/L 113
02.02.2023
Court. No. 12
Suwayan

WPA 11195 of 2019

Bimal Chandra Ghosh
Vs.
State of West Bengal & Ors.

Mr. Timir Baran Saha
Mr. Sindip Sarkar

...for the petitioner.

Mr. Chandi Charan De
Mr. Anirban Sarkar

...for the State.

Mr. Atis Kumar Biswas
Ms. Jyoti Agarwal

...for the respondent Nos. 8 & 9.

All the parties to the instant writ petition are represented by their respective learned Advocates.

Learned Advocate for the State has filed a report of District Magistrate, Nadia which has been asked to be submitted by this Court vide orders dated 03.11.2022 and 28.11.2022 respectively. In support of the instant writ petition Mr. Saha, learned Advocate for the writ petitioner submits before this Court that since the private respondent Nos. 8 and 9 have forcefully made illegal construction over the Government land in front of his Plot Nos. 1855 and 1855/4192, such illegal construction has caused blockage of egress and ingress of the petitioner from the said land. Mr. Saha, learned Advocate argued further that in spite of several representation made by his client, no action has been taken by the State authority for removal of the said construction and, thus, finding no other alternative the instant writ petition has been filed.

It is further submitted by Mr. Saha, learned Advocate that even prior to filing of this Writ Petition, W.P. No. 8218 (W) of 2017 was filed and which was disposed of on 29.03.2017.

As discussed above, in order to ascertain as to whether there exists at all any encroachment either on the aforementioned plots or in front of the aforesaid two plots of land in J.L. No. 47, Mouza – Shyamnagar, Khatian No. 3262, Tehatta, District – Nadia a report was called for from the District Magistrate.

In considered view of this Court the relevant paragraph of the said report that is paragraph No. 5 at page No. 2 is required to be looked into and the same is reproduced hereunder in verbatim:

“Report submitted by Block Land and Land Reforms Officer, Tehatta-I Block vide Memo No. 1080/BLLRO/TEH-I/2022 dated:24.11.2022 wherein it was stated inter alia “...an encroachment was near about 60 sq ft there by P.H.E. (water supply pump for the use of general people) involving in the plot no. 1855. There was a pucca construction owned by Abezan Bewa W/o Chand Ali Molla and Sahabuddin Sk S/o Farid Sk in the plot No. 1807/2691 for near about 0.03 acre of land in front of the suit plot LR plot no. 1855 and 1855/4192. From the e-Bhuchitra database, it is found that Abezan Bewa and Sahabuddin Sk got patta in LR Plot no. 807/2691 for 0.01 acre each

although they made pucca construction near about 0.03 acre in total...”(Annexed hereto as ‘C’)”

On perusal of the said report together with all its annexures it appears to this Court that the present private respondent Nos. 8 and 9 though have been given patta in L.R. Plot No. 1807/2691 for 0.01 acre each but the said private respondent Nos. 8 and 9 made pakka construction near about the 0.03 acre in total.

Mr. Biswas, learned Advocate for the private respondent Nos. 8 and 9, however, disputed contention of Mr. Saha as well as the correctness of the report of the District Magistrate. It is submitted by Mr. Biswas that there was no encroachment on the part of the private respondent Nos. 8 and 9 and on account of personal grudge and in order to facilitate more easy access toward the main road, the present writ petition has been filed.

Per contra, learned Advocate for the State submits that there cannot be any doubt with regard to the report as submitted by District Magistrate, Nadia and for the rest he leaves the matter for the consideration of the Court.

On perusal of the entire materials as placed before this Court and after hearing the learned Advocates for the writ petitioner, State/respondents and the private respondent Nos. 8 and 9 it appears that admittedly the private respondent Nos. 8 and 9 had made some pucca construction beyond their area, that is, in other words they have jointly made pucca construction over L.R. Plot

No. 1807/2691 to the extent of 0.03 acre total though patta was given to them to the extent of 0.02 (0.01 each).

In view of such, this Court has got no hesitation to hold that sufficient materials as has been placed before this Court to substantiate that the private respondent Nos. 8 and 9 have made illegal construction over 0.01 decimal of land in L.R. Plot No. 1807/2691 in J.L. No. 47, Mouza – Shyamnagar, Tehatta, District – Nadia.

Since no citizen of India cannot be permitted take law in his own hand and since no citizen of India can be permitted to make construction over any Government land, this Court directs the S.D.O. cum Executive Magistrate, Tehatta Sub-Division, Tehatta, District-Nadia, Pin – 741160 to pull down and/or to remove the illegal encroachment as made by the private respondent Nos. 8 and 9 over the Plot No. 1807/2691 in J.L. No. 47, Mouza – Shyamnagar, Tehatta, District – Nadia within one month from the date of communication of this order.

It is further ordered that the cost of removal of such construction shall have to be recovered from the private respondent Nos. 8 and 9 and if such payment has not been made by the private respondent Nos. 8 and 9, the S.D.O., Tehatta is at liberty to recover the said amount by initiating certificate proceeding(s).

It is further directed that at the time of compliance of this Court's order, S.D.P.O., Tehatta, District – Nadia shall provide adequate police assistance to the S.D.O., Tehatta, Nadia.

Department is hereby directed to forward a copy of this order to the District Magistrate, Nadia, Superintendent of Police, Nadia, S.D.O., Tehatta, Nadia and S.D.P.O., Tehatta, Nadia for doing their needful.

Accordingly, the instant writ petition being WPA 11195 of 2019 is allowed and disposed of.

Parties to act on the server copies of this order.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)