

Item No.232

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

04.10.2023
Ct-24

WPA 12711 of 2023
Agasti Charan Ghosh

v.

The State of West Bengal & Ors.

Mr. Soumik Ganguli
Ms. Chandana Chakraborty
... for the petitioner.

Mr. Subir Sanyal
Mr. Sutirtha Das
Mr. Kaushik Dey
... for the respondent no. 7.

Mr. Lalit Mohan Mahata
Mr. A. K. Saha
... for the State.

The petitioner challenges the order passed by the Sub-Divisional Officer, Jhargram Sub-Division dated February 20, 2023 whereby the petitioner has been directed to demolish the unauthorized construction.

The petitioner submits that the petitioner and the private respondent are brothers. Because of the rivalry between the two brothers, the parties have filed complaint and counter complaint against each other alleging unauthorized construction.

It appears from the impugned order of demolition that the construction was made without obtaining a proper sanctioned plan. In fact, the construction has been made over agricultural plot of land prior to the same being converted to bastu.

Learned advocate for the petitioner relies upon the provision of deemed sanction. As the Prodhan neither disposed nor rejected the application praying for sanction, accordingly relying on the clause for deemed sanction, the construction was made.

It has been submitted that the private respondent is also guilty of raising unauthorized construction over the selfsame plot of land which is a joint one in between the parties.

It has been submitted that though the plot in question is undivided, there is an amicable settlement and the co-owners have agreed to raise construction and have in fact, raised construction over their respective portions.

Learned advocate representing the private respondent denies that there is any amicable partition of the joint property as claimed by the petitioner. The allegation of raising unauthorized construction at the instance of the private respondent has also been denied.

It appears from the documents annexed to the writ petition that the application for grant of sanction was submitted by the petitioner on August 2, 2021. A no-objection from the Panchayat was obtained by the petitioner on the selfsame date. There was no formal order by the Panchayat permitting the petitioner to raise construction. The petitioner applied for change of classification of the land on September 19, 2022 and the same stood allowed on October 20, 2022. Prior to obtaining the order of conversion, the construction in question was already made.

The conduct of the petitioner in raising construction prior to obtaining the order of conversion, without a valid sanctioned plan is impermissible in law.

The Court does not find any apparent infirmity in the impugned order. However, since it has been submitted that there is similar construction made at the end of the private respondent, accordingly, the Sub-Divisional Officer is directed to cause a spot inspection to ascertain as to whether there is any unauthorized construction made by any other party over the selfsame plot of land without obtaining any conversion certificate and without obtaining any sanctioned plan from the Panchayat.

In the event it transpires that any unauthorized construction exists by any of the parties, necessary steps shall be taken to deal with the same.

The order passed by the Sub-Divisional Officer shall be implemented at once.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)