

ML 66
01.05.2023
Court. No. 19
GB

WPA 16273 of 2022

Krishna Thapa
Vs
The State of West Bengal & Ors.

Md. Younush Mondal

...for the Petitioner.

*Mr. Molay Singh,
Mr. Bibekananda Tripathy*

...for the State.

Mr. Srikanta Paul

...for the Respondent No.7.

On an earlier occasion, the petitioner had approached this Court by filing WPA 7745 of 2022. The said writ petition was disposed of by this Court. The following order was passed:-

“Affidavit-of-service filed in Court today, be kept with the record.

Allegation of encroachment by the respondent nos. 11 and 12 over the land of the petitioner has been made.

The petitioners pray for implementation of the order of the learned Sub-Divisional Executive Magistrate. Such prayer cannot be allowed as the order has lost its force due to efflux of time.

The police report is taken on record, from which it appears that the respondent nos.11 and 12 have constructed a boundary wall exclusively within the property of the said respondents.

Beyond this observation of the police authorities, neither this Court nor the police authorities can go further for adjudicating the actual state of affairs with regard to the right, title and possession in respect of the property in question.

If the petitioners are aggrieved by any encroachment, which may have been caused by the respondent nos.11 and 12, they are at liberty to approach the learned civil court. The police authorities cannot be directed to take cognizance of the complaints, which have been lodged by the petitioners with

regard to the allegations, insofar as, the construction of the respondent nos.11 and 12 and the allegation of encroachment is concerned.

The police authorities shall maintain peace in the area.

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.”

Such order was passed in a writ petition filed by the petitioner alleging inaction of the police authorities in implementing the order of the learned Sub-Divisional Executive Magistrate. The Court was of the opinion that the issue of encroachment should be decided by the civil court as the police found that the construction was on the land of the respondent no.7.

Today, the writ petition has been filed alleging that the respondent no.7 had constructed a staircase along with a boundary wall without leaving adequate set back space and side space, and such construction was in violation the building rules. Permission from the gram panchayat had also not been obtained, it is alleged.

The contention of the learned advocate for the respondent no.7 is accepted to the extent that the question of the boundary wall having encroached the petitioner's land, shall not be decided in this proceeding. This Court had already directed that such dispute shall be raised before a civil court. The Court also took note of the fact that the police authorities found that the construction was within the area owned and possessed by the respondent no.7. Hence, there

was a boundary dispute. The police authorities did not have any authority to decide right, title and interest of the parties. The petitioner was relegated to the civil court.

However, the allegation that staircase and the boundary wall of the petitioner was without any permission and had been raised contrary to the building rules, must be adjudicated by the panchayat authority. The petitioner is at liberty to approach the concerned gram panchayat in accordance with. If such objection is filed, the same shall be disposed of by following 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. 7. An advance notice of the inspection shall be served upon the petitioner and the respondent no. 7 and on 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 any sanction and/or 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. The question of title, possession and boundary dispute etc. shall not be decided by the authorities. The questions to be decided would be whether any staircase had been constructed over and above the boundary wall of the petitioner and without leaving the minimum side space as per the rules and without any permission or in violation of the building rules.
- e) A hearing shall be given to the petitioner and the respondent no. 7. The parties must also be allowed to furnish their written objection/version to the 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 terms of Section 23(5) of the West Bengal Panchayat Act, 1973.

The court has not gone into the merits of the claims of the petitioner and the issues involved shall be decided independently.

The entire exercise shall be completed within a period of three months from the date of receipt of the petitioner's objection.

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.)