

27th July,
2023
(AK)
09

W.P.A 16706 of 2023

Srimanta Bhowmick
Vs.
The State of West Bengal and others

Mr. Subrata Karmakar
...for the petitioner.

Mr. Asish Kumar Guha
Mr. Benazir Ahmed
...for the State.

Mr. B.P. Mondal
Mr. Sukanta Mandal
...for the respondent nos.7 & 8.

Affidavit-of-service filed in court today be kept on record.

Learned counsel for the petitioner submits that previously the private respondent had taken out a writ petition, where an order was passed by a coordinate Bench directing the Moukhali Gram Panchayat, South 24 Parganas, to cause an inspection of the site-in-question where, according to the present private respondent (writ petitioner therein), the present writ petitioner was making illegal construction, and issue necessary orders to ensure that the village road is not encroached upon by respondent no.12 (present writ petitioner) during such construction and the water connection of the present private respondent functions properly.

It was further observed that if it is found that the water connection to the house of the then writ petitioner has been laid through the private land of the respondent no.12 therein (present writ petitioner), steps shall be taken by the Panchayat authorities to find an alternative route convenient for both parties.

Subsequently, it is submitted, the Moukhali Gram Panchayat gave a report on June 16, 2023, annexed at page-18, where it was indicated that there was no irregularity or encroachment on the property.

Thereafter, when the petitioner seeks to make a construction with a valid sanction plan, the local police station is not permitting the petitioner to do so, apparently on the strength of an order passed under Section 144 of the Code of Criminal Procedure.

It is submitted that such action on the part of the police authorities is *de hors* the direction of the coordinate Bench, as well as the law.

Learned counsel for the private respondent controverts such submissions and argues that the document annexed at page-18 of the writ petition does not qualify as a report within the contemplation of the direction given by the coordinate Bench on the last occasion.

That apart, it is reiterated by the private respondent that the petitioner is seeking to make the construction in an illegal manner, on a village road.

Learned counsel for the State submits that no complaint has yet been lodged by the petitioner regarding the allegations made in the present writ petition.

If such a complaint is made regarding the petitioner's construction being hampered in any manner, the police authorities shall definitely take steps in that regard.

A perusal of the document annexed at page-18 shows that the same is authored by the Prodhan-in-Charge of the Moukhali Gram Panchayat, which was directed, in the previous coordinate Bench order, to look into the issue of the allegation of unauthorized encroachment allegedly by the petitioner, which reveals that the Prodhan-in-Charge wrote to the District Magistrate, South 24 Parganas, with a copy to the Block Development Officer, Bishnupur-II, South 24 Parganas, that the said Gram Panchayat had enquired into the matter and came to the conclusion that the plot-in-question is situated in between the village road and a metalled road and the construction was permitted in consonance with all provisions of law.

It was further written in the said communication that, after inspection, a sanction plan and other relevant papers were also handed over.

Thus, at least on a *prima facie* basis, there is nothing on record to indicate that the report of the Gram Panchayat went against the petitioner or there was anything in the report to indict the petitioner of any illegal or unauthorized construction on the village road.

Although the private respondent herein seeks to file an affidavit disclosing the version of the private respondent on the issue, the same is not germane, since this court is not deciding the veracity of the report issued by the Gram Panchayat, nor is the present writ petition filed by the private respondent alleging that the order of the coordinate Bench was flouted in any manner by the Gram Panchayat.

Hence, there is nothing to disbelieve the report annexed at page-18 of the writ petition.

Accordingly, WPA 16706 of 2023 is disposed of, by granting liberty to the petitioner to lodge a formal complaint before the local police station with regard to the petitioner being prevented from making a valid construction in accordance with law and in terms of the sanction plan issued by the appropriate authorities.

If such a complaint is made, the police authorities shall enquire into the matter and afford due assistance to

the petitioner for completing the construction, at the cost of the petitioner.

It may be made clear that the order passed under Section 144 of the Criminal Procedure Code, annexed to the present writ petition, in no manner prevents the petitioner from making any construction in accordance with law.

Such aspects of the matter shall also be scrutinized by the police authorities before granting police assistance.

It is further made clear that if the private respondent has any dispute regarding the order of the coordinate Bench having not been complied with, it will be open to the private respondent to take appropriate steps in that regard.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)