

May 3, 2023
Sl. No.A 105
Court No.19
s.biswas

WPA 18563 of 2022

Manas Adhikary

vs.

The State of West Bengal and others

Mr. Salil Kr. Maiti,
Ms. Pinki Saha

... for the petitioner

Mr. Bibek Jyoti Basu
Mr. Uttam kr. De
Ms. Ankita Mukherjee

... for the State

Mr. Pinaki Bhattacharyya
Mr. Debjyoti Maity
Mr. Amartya Mohan Bhattacharyya

... for the respondent nos.9 & 10

The writ petition has been filed with the allegation that the respondent nos.9 and 10, who are co-sharers in respect of the plot no.592 of Mouza-Barabari, had raised a construction under the PMAY Scheme, without any permission from the Debhog Gram Panchayat.

Admittedly, construction under the Pradhan Mantri Awas Yojana (PMAY) does not require permission from the permission granting authority in terms of Section 23 of the West Bengal Panchayat Act, 1973.

Hence, the contention of the petitioner of illegal construction, is not entertained.

The petitioner alleges that the construction is being raised without maintaining proper boundary on an undivided plot of land and by encroaching a common passage. Admittedly, every co-sharer has a right over every inch of the property, until such

property is partitioned by meets and bounds. Any construction on an undivided property, is subject to partition and no person can claim equity.

The petitioner is at liberty to file a suit for declaration and partition, so that the shares of each of the co-sharers may be demarcated.

Moreover, it appears that there is a suit pending with a prayer for removal of the construction from the alleged common passage.

Thus, no order can be passed in the writ petition. The remedies of the petitioner before the other fora, are kept open.

Accordingly, the writ petition is dismissed.

However, there will be no order as to costs.

All the parties are directed to act on the basis of server copy of this order.

(Shampa Sarkar, J.)