

16.01.2023
Sl. No.6(DL)
srm

W.P.A. No. 28536 of 2022

Tanusree Bhattacharjee

Vs.

The State of West Bengal & Ors.

Mr. N.C. Bihani,
Mr. Lakshminath Bhattacharya
....for the Petitioner.

Mr. Himadri Sekhar Chakroborty,
Ms. Susnita Saha
...for the State-respondents.

Mr. Indrajit Roy Chowdhury
...for the Respondent Nos.10,11,12&14.

Affidavit-of-service is taken on record.

The records reveal that the respondent Nos.10 to 14 have been granted sanction for construction. The petitioner alleges that the respondent Nos.10 to 14 have allegedly made illegal construction of shops and buildings over LR Dag Nos.741, 742, 740, 743, 744 and 759 of mouza Narayanitala, District-South 24-Parganas.

According to the petitioner, the constructions are illegal and unauthorised for the following reasons.

(a) The respondent Nos.10 and 12 had constructed beyond the sanction plan.

(b) The sanction granted to the respondent No.11 does not appear to be genuine in view of the reply given to the petitioner in 2021 under the Right to Information Act.

(c) The respondent Nos.13 and 14 do not have any sanction in respect of a ration shop and a banhi shop respectively.

The petitioner claims to be one of the co-sharers in respect of the lands in question and alleges that the other co-sharers had sold un-partitioned land to the respondent Nos.10 and 14. A partition suit was filed and there was an ad interim order of *status quo*. Subsequently, the order of *status quo* had not been vacated. In the meantime, the petitioner approached the Narayanitala Gram Panchayat with her grievances in respect of the aforementioned constructions.

The learned Advocate for the respondent Nos.10 to 12 and 14 submits that the respondent Nos.10 to 12 have been granted permissions for construction and the construction of the banhi shop of the respondent No.14 dates back to a period when there was no panchayat law in operation and no permission was necessary.

Mr. Chakraborty, learned Advocate for the State-respondents has handed up a paragraph-wise statement prepared by the Block Development Officer, Jaynagar-I Development Block, South 24-Parganas. It appears that the respondent Nos.11, 13 and 14 were asked to produce copies of the documents and the permission before the panchayat authorities.

This Court is neither inclined to enter into the disputed questions of fact nor is the Court to make any observations regarding the dispute.

The partition suit is pending and the respective shares of the parties shall be decided in the suit. It is also a settled legal proposition that each and every co-sharer has the right to each and every inch of the un-partitioned property and as such the portions the parties are holding now are subject to the final decision in the partition suit.

Yet, the constructions cannot be without any sanction or permission from the appropriate permission granting authority.

Disputes with regard to the sanction and the construction have been raised by the petitioner as one of the co-sharers.

Whether the respondent Nos.10 and 12 have constructed beyond the sanction, whether the respondent

No.11 had been granted any permission and whether the respondent Nos.13 and 14 have any permission for their constructions, shall be looked into and adjudicated. The contention of the respondent No.14 that the construction of the shop is old and was made prior to the coming into effect of the Panchayat Act shall also be decided by the appropriate permission granting authority

As such, the writ petition is disposed of with a direction upon the competent authority of the Narayanitala Gram Panchayat, District-South 24-Parganas, to dispose of the abovementioned issues framed by this Court, in accordance with law. While doing so, the gram panchayat shall adhere to the following procedure:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent Nos.10 to 14, with 48 hours advance notice to the petitioner and the respondent Nos.10 to 14.
- b) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also the respondent Nos.10 to 14.

- d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and had been continuing, the authorities may take interim measures by stopping such construction.
- e) A hearing shall be given to all the parties. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions, before the competent authority.
- 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 the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

The Court has not gone into the merits of the claim of the petitioner and the issues framed by the Court shall be decided by the competent authority of the Narayanitala

Gram Panchayat, District-South 24-Parganas, in accordance with law.

The question of title, possession, encroachment, etc. shall not be gone into.

A copy of the writ petition along with a server copy of this order be served upon the Pradhan, Narayanitala Gram Panchayat, District-South 24-Parganas.

The report filed by the Block Development Officer, Joynagar-I Development Block and the copy of the plan and permission in respect of the respondent No.11 are taken on record.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)