

D/L 07
10.04.2024
Court No. 24
Sayandeep

WPA 9559 of 2024

Anara Bibi & anr.
Vs.
The State of West Bengal & Ors.

<i>Ms. Pampa Dey (Dhabal)</i>	<i>...for the petitioners</i>
<i>Mr. Debnarayan Banerjee</i>	
<i>Ms. Sahina Sumi</i>	
	<i>....for the State</i>
<i>Mr. Md. Abdullah</i>	
<i>.....for the private respondent Nos. 8 to 12</i>	

The petitioners complain of illegal and unauthorized construction over two plots of land being Dag No. 1612 and 1613, Khatian No. 2019, J.L. No. 6. From the record of rights, it appears that 1612 is classified as sali and 1613 is classified as graveyard. Learned counsel for the petitioners submits and has produced photographs in support of her submission that illegal construction is being made thereon without obtaining any sanction from the Panchayat.

The petitioners refer to the order passed by the Executive Magistrate, Baruipur Sub Division, South 24 Parganas in a proceeding under Section 144 (2) Cr. P.C. in M.P. case No. 750 of 2020 on 27th February, 2024 whereby the Officer-in-Charge of the Hatisala Police Station has been directed to enquire and state whether there is any chance of breach of peace in connection with the instant case and to maintain

peace and to submit report. The opposite parties have been restrained from making illegal construction over the subject plot of land.

It has been submitted that despite order passed by the learned Executive Magistrate, the work of construction is going on in full swing.

A complaint has been lodged before the Officer-in-Charge and before the other respondent authorities including Pradhan of the Gram Panchayat against the unauthorized construction but the same has not been taken up for consideration till date.

Learned advocate representing the private respondents admits that sanction has not been obtained for raising construction at the subject plots of land. It has been submitted that application has been made for obtaining sanction but the same is yet to be allowed.

It has further been submitted that a civil suit is pending consideration in respect of the subject plots of land. The writ Court ought not to enter into the private dispute in between the parties.

Learned advocate representing the State respondent has obtained instruction from the Officer-in-Charge, Polerhat P.S. It appears that the police is aware of the order passed by the learned Court below and the police communicated the order to the opposite

parties and instructed the said parties to maintain peace and not to make any construction.

During enquiry, it was noticed that the concrete floor base has already been made. The police is making regular visits at the subject place.

Upon hearing the parties and upon perusal of the materials placed before this Court, it appears that admittedly, no sanction has been obtained for raising construction. In fact, no construction can be made over a graveyard and over any plot of land which is recorded as sali till the classification of the same is converted. Sali land and graveyards are not cultivable plots.

The Executive Magistrate has passed order directing the police to ensure that no construction is carried on at the subject premises. The objection filed by the petitioners alleging unauthorized construction is pending consideration.

As it appears that the representation of the petitioners objecting to the illegal and unauthorized construction is pending consideration at the end of the respondent authorities, no useful purpose will be served by keeping the writ petition pending.

The writ petition is accordingly disposed of by directing the respondent no. 6, Pradhan, Beota No. 2, Gram Panchayet to consider and dispose of the

representation made by the petitioners, strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties, including the petitioners, at the earliest, but positively within a period of three months from the date communication of a copy of this order. The said respondent shall pass a reasoned order and communicate the same to all the necessary parties, including the petitioners, immediately thereafter.

A spot inspection shall be conducted to ascertain the nature and extent of unauthorized construction.

In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.

It is made clear that this Court has not entered into the merits of the claim made by the petitioners and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioners.

The Panchayat Authority will not decide the right, title and interest of the parties and will restrict

the decision only with regard to unauthorized construction being made without a sanctioned plan.

Learned advocate appearing for the petitioners is directed to forward a copy of the representation dated 27th March, 2024 to the aforesaid respondent at the time of communicating the order of the Court.

The Officer-in-Charge, Polerhat P.S. is directed to keep strict vigil and ensure that construction in any manner whatsoever is not carried out in the subject premises.

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.

(Amrita Sinha, J.)