

17.01.2024
Court No. 24
Item 18
cp

WPA No. 12570 of 2023

Ashok Halder & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Debajyoti Deb
Mr. Tamal Ghosh
Ms. Somdyuti Parekh

.....for the petitioners.
Ms. Jhuma Chakraborty
Mr. Suddhadev Adak

.....for the State.

Mr. Sudeep Sanyal
Ms. Tutun Das
Mr. C. Lahiri

.....for the respondent nos. 7, 8 & 9.

Affidavit of service is taken on record.

The petitioners complain that the private respondents are raising construction over their private property by trespassing into the same. According to the petitioners the construction is without any sanctioned plan.

The petitioners lodged complaint before the panchayat and the other State respondents and also approached the Court of the learned Executive Magistrate under Section 144(2) of the Code of Criminal Procedure.

Allegation is that none of the complaints has been answered. The private respondents are continuing with the construction work.

Learned advocate representing the private respondents relies upon the registered deed of sale executed by the private respondents in favour of the petitioners. It has been submitted that the private respondents sold the open terrace in the first floor measuring 2160 square feet to the petitioners. The roof right in respect of the first floor was never sold or conveyed in favour of the petitioners.

It has been submitted that the construction is being made on the roof of the first floor of which the private respondents are the sole and absolute owners. Construction is being made in accordance with the plan sanctioned by the panchayat.

Learned advocate representing the State respondents has obtained instruction from the Pradhan of the gram panchayat which mentions that the Pradhan has written to the Block Development Officer that necessary measures have been taken to stop the illegal construction in front of the mosque at Canning Bazar. The police has been informed and requested to stop the illegal construction. No permission was taken from the panchayat for raising such construction but as the panchayat does not have the power to demolish the construction,

accordingly, steps for demolition could not be taken by the panchayat.

Upon hearing the parties and upon perusal of the documents placed before this Court it appears that an issue has been raised with regard to the place where the construction is being made. Both the parties, i.e., the petitioners and the private respondents claim ownership of the said place. According to the panchayat, the construction is being made without obtaining any permission.

The Prodhan will not be the appropriate authority to decide the issue of title or ownership of the property. The panchayat is the authority to take a decision with regard to the construction that is being made.

As the Prodhan is of the opinion that the construction is being made without any permission, accordingly, the Prodhan ought to have taken steps to deal with such unauthorized construction, in accordance with law. Apart from issuing the stop work notice, the Prodhan has not taken any steps to deal with the unauthorized construction.

The Prodhan is, accordingly, directed to cause a spot inspection upon prior notice to the necessary parties to ascertain as to whether the construction that is being made is in accordance with any plan sanctioned or not.

The instant direction is being passed particularly because of the reason that the learned advocate representing the private respondents has produced before this Court a copy of the plan relying upon which the construction is claimed to be made.

The panchayat concerned is directed to scrutinize the plan to ascertain as to whether the same is genuine or not. If the plan is found to be a genuine one, then the panchayat shall decide as to whether the construction is being made in accordance with the plan sanctioned.

The report of spot inspection shall be circulated amongst the parties. Thereafter, an opportunity of hearing shall be granted to the parties to make submission to defend their respective stand. If ultimately it transpires that the construction is not in accordance with the building Rules, then necessary remedial steps shall be taken to deal with the same.

The panchayat shall forward the recommendation to the Sub-Divisional Officer if it is of the opinion that the construction is not in accordance with the building Rules. On receipt of the recommendation from the Prodhan, the Sub-Divisional Officer shall take necessary steps in the matter in accordance with law.

The Prodhan is directed to cause the spot inspection at the earliest but positively within a period of four weeks from the date of communication of this order. The panchayat shall decide the issue of unauthorized construction within a period of six weeks thereafter and forward the report to the Sub-Divisional Officer immediately thereafter. The panchayat is restrained from entering or adjudicating any private dispute regarding ownership or encroachment.

The Sub-Divisional Officer shall act in accordance with law within a period of four weeks thereafter.

The writ petition stands disposed of.

The communication made by the Prodhan to the Block Development Officer dated January 8, 2024, the copy of the deed of conveyance handed over by the learned advocate representing the private respondents and the copy of the report filed by the Inspector-in-Charge, Canning Police Station dated June 3, 2023, be retained with the records.

Urgent photostat certified copy of this order, if applied for, shall be furnished to the applicant at an early date.

(Amrita Sinha, J.)