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28.02.2024
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In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 20708 of 2023

Haradhan Diggar
Vs.
The State of West Bengal & Ors.

Mr. Gopal Ch. Ghosh,
Mr. R. K. Mandal.
...for the petitioner.

Ms. Sangeeta Roy,
Mr. Prashant Kumar Tripathi.
...for the State.

Affidavit-of-service filed in Court today is taken on record.

The petitioner complains of illegal and unauthorised construction at the behest of the private respondents. Objection filed against such unauthorised construction is pending consideration.

None appears on behalf of the private respondents.

Learned advocate representing the petitioner submits that a civil suit in between the parties is pending consideration before the learned Court. An order of injunction has been passed by the learned Court directing the parties to preserve status quo as regards nature and character of the “Ka” scheduled suit property. Learned advocate for the petitioner submits that the order of injunction is subsisting till date.

It has been submitted that despite stop work notice issued by the Gram Panchayat, the private respondent is continuing with the construction work.

Learned advocate representing the State respondents has obtained instruction from the Block Development Officer, Chandrakona-II signed on 9th October, 2023 mentioning that the suit plot is an undivided property of the petitioner and the private respondents. R.S. Plot No.733 of Mouza Bhairabpur, J.L. No.-55 measuring the area of 0.05 acres has been classified as Danga Puratan Patit, and recorded in R.S. Khatian No.7. Later 0.01 acre of the land was vested to the State by operation of law and the remaining area of the plot was recorded in the names of different tenants by opening Khanda Khatians.

The Pradhan of the Gram Panchayat has communicated to the Block Development Officer that the private respondent nos.7 and 8 started raising construction over Dag No.733 without obtaining any sanction from the Gram Panchayat.

In view of the order that I propose to pass, none of the non appearing respondents would be prejudiced if the writ petition is disposed of in the following manner.

As it appears that the representation of the petitioner 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.2 being the Prodhan, Bhagabantapur-II Khirati Panchayat to consider and dispose of the representation made by the petitioner strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties including the petitioner within a period of three months from the date of 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 petitioner 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.

The aforesaid respondent shall restrict the consideration of the representation with regard to unauthorized construction only and not enter into or decide any private dispute of the parties regarding right, title and interest in respect of the aforesaid land.

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

The petitioner is directed to forward a copy of the representation dated 10th April, 2023 to the aforesaid respondent at the time of communicating the order of the Court.

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.)