

07.10.2024
Court No.09
Item no.06
CP

WPA No. 23464 of 2024

Smt. Nirupama Roy
Vs.
The State of West Bengal & ors.

Mr. A. K. Gayen
Ms. A. A. Gayen
.... for the petitioner.

Mr. Suman Ghosh
Ms. Munmun Tewary
.....for the State.

Mr. Sabyasachi Chatterjee
Mr. Pintu Karar
Mr. Akashdeep Mukherjee
Mr. S. U. Laskar
Mr. Sourav Roy
.....for the respondent no. 7.

The writ petition involves disputed questions of fact. The petitioner does not have any justifiable ground to oppose the order dated June 26, 2024, passed by the District Magistrate, directing removal of the construction from Plot No.870 of Jhikira Mouza.

Such order was passed pursuant to a direction of the High Court in WPA No. 4130 of 2022. One Kajal Rekha Pal Roy (wife of the respondent No.7) had alleged that the petitioner had made an unauthorized construction on LR Dag No.870, corresponding to LR Khatian Nos.335 and 1725. According to Kajal Rekha Pal Roy, the property was a debuttar property.

The court was of the view that as the petitioner and the other respondent therein, claimed to have made the construction under the PMAY(G) Scheme, Section 23 of the West Bengal Panchayat Act, 1973 would not be applicable. Accordingly, the wife of the respondent no. 7 was asked to approach the District Magistrate, Howrah for a decision in the matter. Such approach was directed to be made through the Block Development Officer, Amta – II. Accordingly, the wife of the respondent no. 7 approached the District Magistrate and the order was passed. Subsequently, Smt. Kajal Rekha Pal Roy also expired.

Enquiry and inspection were made in the presence of the petitioner. It was found from the records that the petitioner had applied for construction on Plot No. 869, whereas, the report of the Block Land & Land Reforms Officer specifically recorded that the construction was found on Plot No. 870 of Jhikira Mouza, pertaining to LR Khatian No. 335 and 1725. The said khatian was recorded in favour of 'Debotter Damodor Jeu Thakur'.

Learned advocate for the petitioner submits that the Revenue Inspector found an encroachment on Plot No.870, but did not find the total construction on Plot No.870. It is further submitted that Kajal Rekha Pal Roy was not the shebait as per the order of the learned civil court.

Learned advocate for the State respondents has filed a report which indicates that an inspection was made by the Block Land & Land Reforms Officer as directed by this court in the earlier round of litigation. Upon such inspection, demarcation and matching of the documents with the land records, it was found that the construction was on Plot No. 870.

In any event, the inspection report of the Block Land & Land Reforms Officer contain factual aspects. The report was prepared on the basis of demarcation, enquiry and consultation with the land records. The petitioner does not deny the fact that the application for construction was made in respect of Plot No. 869. The petitioner only draws support from a report of the Revenue Inspector which was made on the basis of the sketch map supplied by the petitioner. From the said report it transpired that a portion of Plot No.870 was encroached upon, but the entire construction was not on Plot No.870.

In any event, the report of the Revenue Inspector cannot be relied upon because the High Court had directed the Block Land & Land Reforms Officer, Amta – II to cause the inspection and further directed the District Magistrate to decide the matter upon such inspection. The records do not reveal that the petitioner had raised any objection to such inspection. The contents of the inspection report filed by the Block

Land & Land Reforms Officer has been recorded by the District Magistrate. This factual aspect cannot be gone into by the writ court.

Under such circumstances, the writ petition is dismissed. The enquiry report prepared by the authorities indicate that the petitioner had constructed on LR Plot No.870.

Whether the property is a debottor property or not and whether the petitioner has any claim over Plot No.870, are matters which cannot be adjudicated either by the District Magistrate or by the High Court.

If the petitioner wants any declaration in respect of Plot No.870, the remedy of the petitioner would be before the civil court. Under such circumstances, the order of the District Magistrate cannot be faulted.

As this is the festive season, the demolition shall be effected only after November 4, 2024. The petitioner is given this breathing time to make an alternative arrangement, on the undertaking that the petitioner will cooperate with the authorities in future and remove the construction after November 4, 2024.

Accordingly, the writ petition is disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)