

23-09-2024
126 AKG
Ct. 15

WPA 24047 of 2024
Prabir Halder & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Dyutiman Banerjee,
Mr. Vishal Mallick

...for the Petitioner

Mr. Prabir Maji

...for Respondent No. 5

Mr. Lalit Mohan Mahata

Mr. Prasanta Behari Mahata

...for the State

The petitioners allege that respondent no. 5 has encroached a part of R.S. Dag No. 768/4945, L.R. Dag No. 902, R.S. Khatian No. 1465, L.R. Khatian No. 4551, 4552, 4553, 4554 & 4555 respectively under Mouza-Radhakantapur Abad.

The petitioners submit that respondent no. 5 has raised an unauthorised construction at the said plot and is operating a sawmill from the said premises.

The petitioners submit that the construction is entirely unauthorised. They made a representation before the Panchayat for demolition of the construction but no steps have been taken by Panchayat.

Respondent no. 5, on the other hand, submits that the construction is temporary in nature does not require a sanctioned plan from the

Panchayat authority.

Mr. L. M. Mahata, learned advocate appearing for the State has drawn attention of this Court to an order dated December 6, 2023, passed by a Co-ordinate Bench of this Court in WPA 11523/2023 at the behest of respondent no. 5 whereby the Court directed the officer-in-charge, Raidighi Police Station to take necessary steps, in the event, there was any obstruction in running the saw mill.

Mr. Mahata, however, submits that the petitioners have already filed Title Suit 194/2023 before the learned Civil Judge (Junior Division), Diamond Harbour, Dist.- South 24 Pargans for declaration of their right, title and interest over the property and also for an injunction. The Learned Civil Judge, however, declined to pass any order of injunction.

It has been strenuously argued by the learned advocate appearing for the petitioners that in this writ petition, the issue involved is whether the relevant construction was undertaken with proper sanction from the Panchayat. This is not a subject matter of the civil suit.

The petitioner may be right in contending

that the subject matter of the civil suit and the dispute in this writ petition are different, but at the same time, it cannot be overlooked that a demolition order passed in this writ petition would render respondent no. 5 non-suited.

The petitioners have decided to approach the Civil Court to resolve the disputes. Nothing prevents the petitioners to approach the Civil Court to raise the issue as canvassed in this writ petition.

In that view of the matter, I am not inclined to entertain this writ petition.

Accordingly, **WPA 24047 of 2024** is dismissed.

Urgent certified *website* copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)