

16 14.03.
Ct No 2024
24
AGM/
BR

**In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

WPA 28640 of 2023

**Smt. Tanusri Chakraborty
Vs
The State of West Bengal & Ors.**

Mr. Debabrata Roy.
Mr. Monojit Pal.
Mr. Ayan Mitra.
Ms. Sarbani Mukhopadhyay.

... For the Petitioner.

Affidavits of service filed in Court are taken on record. None represents the respondents.

The petitioner complains of illegal and unauthorised construction at the behest of the private respondent. It has been submitted that the structure of the petitioner and the private respondent is separated by a common wall.

The private respondent, without obtaining any permission from the Gram Panchayat, has taken steps to demolish the common wall and is raising further construction thereon.

The petitioner filed objection before the Gram Panchayat but the same has not been considered.

On account of the construction work made by the private respondent, the structure of the petitioner is getting damaged. The petitioner apprehends that the structure may collapse at any point of time.

Learned advocate for the petitioner has produced before this Court copy of the order dated 2nd February, 2024 passed by the learned Executive Magistrate, Uluberia, Howrah in Misc. Case No. 122/2024 under Section 144(2) Cr.P.C. Copy of the petition under Section 144(2) Cr.P.C. has also been produced before this Court.

The learned Magistrate, on perusal of the said petition, directed the Officer-in-Charge, Amta Police Station to maintain strict vigil over the property and to submit physical enquiry report to the Court. The Magistrate also allowed the petitioner (private respondent herein) to do his construction as per the permission from the Gram Panchayat.

On a perusal of the petition under Section 144 (2) Cr. P.C. it does not appear that there is any mention as to whether the construction is being carried out by the private respondent in accordance with any sanction or permission granted by the Gram Panchayat. The copy of the present writ petition was served upon the private respondent.

The track report annexed to the affidavit-of-service filed by the petitioner clearly shows that the private respondent received the copy of the writ petition prior to applying before the learned Court for obtaining order under Section 144(2) of the Cr.P.C.

It appears that the learned Magistrate has been misled to pass the order. The said order was obtained upon suppression of material facts and without disclosing proper facts.

As it has been submitted that the structure of the petitioner is getting seriously damaged on account of the construction work made by the private respondent, accordingly, the private respondent is restrained from continuing with any further construction work for the time being.

The Gram Panchayat is directed to consider the objection that has been filed by the petitioner in accordance with law and thereafter take a decision whether the construction may be permitted to be continued by the private respondent.

If it appears that the construction is being made without any permission/sanction from the Panchayat, then necessary remedial steps shall be taken forthwith.

A spot inspection shall be conducted to ascertain the exact nature and extent of construction that is being made. Opportunity of hearing shall be granted to both the parties to produce documents in support of the construction made.

A final order shall be passed by the Panchayat at the earliest but positively within a period of eight weeks from the date of communication of this order. The reasoned order shall be communicated to the parties immediately thereafter.

The Officer-in-Charge of Amta Police Station is directed to keep strict vigil over the property in question to ensure that construction in any manner whatsoever is not carried out at the subject premises till the matter is finally decided by the Gram Panchayat.

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.)