

14.06.2024
Sl. No.11(DL)
srm

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

W.P.A. No. 623 of 2024

Bidyawati Devi

Versus

State of West Bengal & Ors.

Mr. Subhankar Dutta

...for the Petitioner.

Mr. Subir Kumar Saha, Id. AGP

Mr. Pradip Sarkar

...for the State-respondents.

Mr. Arjun Chaudhury,

Mr. Bikash Singha

...for the Respondent Nos.7 to 9.

1. Affidavit-of-service is taken on record.
2. The petitioner alleges that the respondent Nos.7 to 9 have raised a construction without maintaining the rules and without keeping the necessary side space. A complaint was lodged before the Pradhan of Banarhat Gram Panchayat, Jalpaiguri. It is further contended the no steps have yet been taken by the panchayat authorities.
3. Learned Advocate for the respondent Nos.7 to 9 submits that the petitioner does not have any sanction for construction of her ownhouse. Rather, the respondent Nos.7 to 9 have a duly sanctioned plan from the

competent authority and the construction has been done in accordance with the plan. It is further submitted that the petitioner has already file a civil suit against the respondent Nos.7 to 9 being Title Suit No.561 of 2022. The suit is pending before the learned Civil Judge (Junior Division), 2nd Court at Jalpaiguri.

4. Reference is made to the plaint and paragraphs 6 to 9 thereof. Further reference has been made to the prayers. It is contended that the suit has been filed on the selfsame cause of action.

5. The report of the police authorities is taken on record. The police authorities have also indicated that the suit is pending.

6. The prayers in the suit are quoted below:

- “ i. A decree declaring that the construction made by the defendants is illegal.
- ii. A Mandatory injunction directing the defendants to demolish the 11. illegal part of the construction, or the plaintiff be allowed to demolish the said illegal construction at her own cost and entitled to recover the same from the defendants.
- iii. A Mandatory injunction removing the obstruction in the ingress and egress of the plaintiff.
- iv. A permanent injunction restraining the defendants to enter into the suit property fully mentioned in schedule.
- v. An injunction restraining the defendants to create any disturbances in the suit property or to create any 3rd party interest in the suit property.

- vi. An injunction restraining the defendant to raise any illegal construction.
- vii. A temporary injunction restraining the defendant to raise any illegal construction or to raise any further construction till the disposal of the suit.
- viii. A temporary injunction in terms of prayer above.
- ix. Cost of the suit.
- x. Any other relief or relieves."

7. Part of the prayers and pleadings in the plaint are similar to the issues raised in this writ petition. In my view, parallel proceeding cannot continue as the petitioner has also prayed for demolition of the structure in the suit. Although law provides that panchayat authorities are competent to decide whether there has been any unauthorised construction or not and take steps in respect of such unauthorised construction, but in view of the pendency of the suit and the similarities in the pleadings and prayers, this Court is not inclined to entertain the writ petition.
8. All parties are at liberty to take steps in the suit. The petitioner may implead the panchayat authorities in the suit, if advised,
9. The writ petition is, thus, disposed of.
10. There shall be no order as to costs.

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

(Shampa Sarkar, J.)