

Sl. No.06
17.03.2025
Suman
Ct. 39

WPA 7770 of 2024

Sri Jagannath Chowdhury
Vs.
The State of West Bengal and Ors.

Mr. Debrup Choudhury
Mr. Sounak Mukherjee
..for the petitioner

Mr. Amit Ranjan Pati
Ms. Swastika Chowdhury
..for respondent nos. 2, 3

Mr. Prasad Bhattacharyya
...for private respondent

Mr. Kamal Mishra
Mr. Pratap Sanfui
Ms. Poushali Das
...for respondent no.6.

Mr. Tapan Coomar Dey
Mr. Sujit Chatterjee
..for the State

This writ petition has been filed for consideration of representation/advocate's letter dated 3rd January, 2024.

The petitioner alleges of illegal and unauthorised construction on the ground floor building with terrace raised over the south-eastern portion of Dag No.5758 which is adjacent to Dag No.5759 of Khatian No.566, Mouza Khiri, Block-Kotulpur, J.L. No.090, District-Bankura. The petitioner contends that he is a recorded owner of 5 *Satak* land on the north-eastern side over plot within Dag No.5758 and the private respondents are

making construction on the ground floor building with terrace over the south-eastern portion of Dag No.5758 which is adjacent to Dag No.5759 which is a mandir without any sanctioned plan. On 21st March, 2023, a representation was made before respondent no.3, the Panchayat Pradhan, Kotulpur Gram Panchayat. However, no steps were taken and thereafter, an advocate's letter was also submitted on 3rd January, 2024 to respondent no.3 with the allegation of illegal and unauthorised construction. Since no steps have been taken up, hence this writ petition.

Mr. Debrup Choudhury, learned advocate appearing for the petitioner submits that the private respondents without leaving requisite side open space have illegally made construction. Though such fact was brought to the notice of the local Gram Panchayat, no steps have been taken. He seeks for consideration of the representation of the petitioner made through his advocate on 3rd January, 2024 and direction be issued upon the Pradhan for causing inspection, prepare report and thereafter herring the parties pass reasoned order.

In support of his contention, he relies on the decision of this Court in **WPA 1631 of 2022 (Syed Md. Aoun and Ors. versus Board of Wakf, West Bengal and Ors.)**.

On the contrary, Mr. Prasad Bhattacharyya, learned advocate appearing for the private respondent submits that the entire dispute is civil in nature. The

boundary wall has been made by the private respondent encompassing his residential building. As per Rule 19 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004, no such permission is required for erecting a boundary wall surrounding a residential house. To buttress his contention, he relies on the decision of this Court passed in ***MAT 1704 with CAN 9435 of 2016 (Tapan Kumar Dutta & Ors. versus The State of West Bengal and Ors.)*** reported in ***2016 4 CHN 709***. In the light of his aforesaid submission, he prays for dismissal of this writ petition.

Mr. Amit Ranjan Pati, learned advocate representing respondent no.2, Kotulpur Gram Panchayat and respondent no.3, Pradhan of the concerned Gram Panchayat submits that the representation of the petitioner dated 21st March, 2023 only pertains to making of a boundary wall without leaving requisite side open space. However, in the advocate's letter, the petitioner has tried to improve his case by incorporating the fact of illegal construction. He informs this Court that the dispute between the parties relates to encroachment, which is civil in nature and cannot be adjudicated by writ Court. He also seeks for dismissal of the writ petition.

Learned advocate appearing for the State respondent leaves the matter to the discretion of this Court.

Upon perusal of the representation of the petitioner, it is found that the petitioner himself has

alleged that the private respondent is making construction of a boundary wall without leaving requisite side open space. Such fact also finds place in the advocate's letter dated 3rd January, 2024. It is pertinent to note that no case of illegal unauthorized construction has been made out in the representation of the petitioner dated 21st March, 2023 as has been stated in the advocate's letter. Therefore, it appears to be incorporation of new facts through the advocate's letter which was not there in the earlier letter submitted by the petitioner himself.

Be that as it may, it is to be seen whether under Rule 19 there is any requirement of permission as regards the boundary wall.

Rule 19 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 is quoted below:

- “19. Exemption from permission-** (1) No permission of the Gram Panchayat shall be necessary for erection of any thatched structure, tin shed, or tile shed, without brick wall, covering an area not exceeding eighteen square metres and such structure or shed does not cover more than three fourths of the total area of the land including the land appurtenant thereto:
[Provided that no permission of the Gram Panchayat shall be required for construction of houses under poverty alleviation programme.]
- (2) Permission of the Gram Panchayat shall not be necessary for repair of an existing structure or building unless,-
- (i) any structural change is involved, or
 - (ii) such repair brings any change in the existing covered area, or
 - (iii) such repair includes any addition of a projection from the existing structure or building ground level or upper level.
- (3) Permission of a Gram Panchayat shall not be necessary for erection of a boundary wall unless it is made of brick or cement and the bounded area is not

kept as vacant land but it is used or likely to be used as stack yard or for any commercial or institutional purpose either on open space or by erecting temporary shed.”

In the decision of *Tapan Kumar Dutta (supra)*, the

Hon’ble Court observed as follows:

“7. A bare perusal of sub-rule (3) of Rule 19, as quoted above, reveals that no permission from a Gram Panchayat is necessary for erection of a boundary wall unless it is made of brick or cement and the bounded area is not kept as vacant land, but it is used or likely to be used as a stack yard or for any commercial or institutional purpose, either on open space or by erecting temporary shed. In other words, if a boundary wall is erected out of brick or cement and within the bounded area, the land is vacant or used for non-commercial or non-institutional purpose, there is no requirement for permission from the concerned Gram Panchayat.

8. The clear language of the statute is self-explanatory in nature. The factual narration preceding the decision rendered by the Pradhan of the Gram Panchayat – which was the subject-matter of challenge before the writ Court – does not disclose construction of a boundary wall for commercial or institutional purposes for which permission was required to be obtained in terms of sub-rule (3) of Rule 19 from the concerned Gram Panchayat. Rather, the factual narration preceding the decision rendered by the Pradhan of the concerned Gram Panchayat clearly reveals that the said wall was being constructed around the perimeter of a residential house of the appellants. As such, there was no unauthorized construction of a boundary wall which could have led to an order passed by the Pradhan of the concerned Gram Panchayat for demolition. The learned Single Judge while dismissing the writ petition did not consider this aspect of the matter at all. The other significant aspect which remained unnoticed before the learned Single Judge is that it is not the Pradhan but the concerned Gram Panchayat which is the proper authority/body empowered to either grant or refuse permission for any erection or construction or repair as envisaged under Rule 19 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004.”

Bearing in mind the provision as well as the proposition of law laid down in the above decision, it manifest that if a boundary wall is erected out of brick or cement and within the bounded area, the land is vacant or used for non-commercial or non-institutional purpose, there is no requirement for permission from

the concerned Gram Panchayat. It is not in dispute that the boundary wall surrounds the residential house of the private respondent. Therefore, the question of taking permission does not arise in the facts and circumstances of this case.

The issue relating to not leaving requisite side open space by the private respondent is precisely an allegation of encroachment, which is civil in nature and should be agitated before the Civil Court having jurisdiction.

In view of the above discussion, the writ petition falls short of merit.

Accordingly, the writ petition being no. **WPA 7770 of 2024** is dismissed.

There shall be no order as to costs.

All connected applications, if any, stands disposed of.

Interim order, if any, stands vacated.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Bivas Pattanayak, J.)