

07.02.2025
Sl. No. 05.
D/L.
Mithun
Ct.No.39.

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 9674 of 2024

**Dilip Kumar Saha
Vs.
The State of West Bengal & Ors.**

Mr. Kajal Ray,
Mr. Suman Nandi

..for the petitioner.

Mr. Sauradeep Dutta,
Mr. Himadree Ghosh

...for respondent no.2 to 4.

Mr. Lalit Mohan Mahata, Id. A.G.P.,
Mr. Prasanta Behari Mahata

...for the State.

Affidavit-of-service filed on behalf of the petitioner
is taken on record.

The present writ petition is filed challenging the
stop work order issued by the Pradhan, Baliguri-I Gram
Panchayat dated 24th February, 2024.

The brief fact of the petitioner's case is that the
petitioner is the recorded owner of 12 decimals of land
by way of purchase as well as by inheritance comprised
within Mouza-Baliguri, J.L. No.53, R.S. Dag No-838 (L.R.
Dag No-1018). The other co-sharers are respondent
no.8-Prabhas Chandra Saha, Ashok Kumar Saha and
Subhas Saha. The joint property has not been
partitioned by metes and bounds. A partition suit being

Title Suit No.362 of 2014 is filed by one Saraswati Saha (mother of respondent no.8) before the learned Civil Judge (Senior Division), 2nd Court, Chinsurah which is presently pending before Civil Judge (Junior Division), 1st Court, Chandannagore. The property is surrounded by a brick built boundary wall in four sides since long and the petitioner along with other brothers except respondent No.8 is residing within the said boundary wall upon construction of their respective houses. It is further contention that on 24th February, 2024, the private respondent and respondent no.4 came to the petitioner's property and asked the petitioner to demolish the boundary wall. Since the boundary wall existing since long was not removed by the petitioner, the respondent no.3, Pradhan, Baliguri-I Gram Panchayat has issued the impugned notice dated 24th February, 2024 arbitrarily to stop installation of gate of the boundary wall. Hence this writ petition.

Mr. Kajal Ray, learned Advocate appearing for the petitioner submits that the impugned notice issued by the Pradhan, Baliguri-I Gram Panchayat is illegal and bad in law. Since installation of gate is not a construction, hence seeking permission for such installation does not arise at all. Be that as it may, the work of installation of gate is exempted from permission as per Rule 19 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004. Thus, the

impugned notice 24th February, 2024 should be set aside.

On the contrary, Mr. Sauradeep Dutta, learned Advocate appearing on behalf of Pradhan, Baliguri-I Gram Panchayat, respondent no.3 submits that the petitioner was asked to produce documents before the Pradhan, Baliguri-I Gram Panchayat and in the meantime, to stop work of installation of the gate. However, the petitioner did not comply with the notice rather installed the gate illegally. He seeks for dismissal of the writ petition.

Mr. Lalit Mohan Mahata, learned Additional Government Pleader appearing on behalf of the State-respondents submits that the notice issued by the Pradhan, Baliguri-I Gram Panchayat was only for verification of the documents, nothing more nothing less. He further indicates that if there is a construction undertaken made of brick built, permission is necessary. Rule 19 of Rules, 2004 exempts from permission in respect of thatched structure, tin shed, or any other shed but not brick built wall. He seeks for necessary direction upon the Pradhan to cause inspection and act in accordance with the rules.

On perusal of the records placed before this Court, it is found that by the impugned notice, the petitioner was asked to refrain from installation of the gate and was asked to appear before the office of the Baliguri-I

Gram Panchayat. Admittedly, there is an existing brick built wall on the four sides of the property in question.

Rule 19(1) provides as hereunder:-

“19(1) No permission of the Gram Panchayat shall be necessary for erection of any thatched structure, tin shed, or the shed, without brick wall, covering an area not exceeding eighteen square metres, and such structure or shed does not cover more than three-fourth of the total area of the land including the land appurtenant thereto.”

Upon bare reading of the aforesaid provision, it is found that excepting brick built wall, if the structure is thatched structure, tin shed, or any other shed, no permission of Gam Panchayat is necessary for erection of such structure. Nothing has been placed on record that the existing brick built structure, i.e., the boundary wall has been constructed after obtaining necessary permission from the Panchayat. Such being the position, the writ petition is disposed of directing the Pradhan, Baliguri-I Gram Panchayat to cause an inspection at the concerned site in presence of petitioner, respondent no.4 and private respondent no.8 upon notice to the parties. The parties including the petitioner shall be heard. On the basis of what transpires at the hearing and during inspection, the respondent no.3 shall take the proceedings to its logical conclusion and take necessary steps as required in accordance with law upon passing a reasoned order.

The reasoned order shall be communicated to the parties.

With the aforesaid observation, the writ petition being **WPA No.9674 of 2024** stands disposed of.

All connected applications, if any, stand disposed of.

There will be, however, no order as to costs.

Interim order, if any, stands vacated.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Bivas Pattanayak, J.)