

12.02.2025

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Ct. no.39

Ss

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

W.P.A. 12779 of 2024

Sushil Patra

-Vs-

The State of West Bengal & ors.

Mr. Sandip Ray

... for the petitioner

Mr. Lalit Mohan Mahata, Ld. AGP

Mr. Kapil Guha

... for the State-respondent

Mr. Prantick Ghosh

Mr. Prosad Bhattacharyya

... for the private respondent

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

This writ petition under Article 226 of the Constitution of India has been filed seeking direction upon the respondents and their men and agents to take strict action against the unauthorized construction of the private respondents undertaken without any permission from the concerned authorities and also to consider the representation dated 4th March, 2024.

The petitioner's case in brief is that the petitioner is the owner of piece and parcel of the land measuring about 3 *satak* at Mouza Atisara, J.L. No.17, Resa X, Touzi 2010 under R.S. Khatian No.105, L.R. Khatian No.851, R.S. Dag No.373, L.R. Dag No.409. It is alleged that the private respondents have made unauthorized *kuccha* construction encroaching the land of the petitioner

illegally without any permission. The petitioner filed a civil suit being Title Suit No. 220 of 2014 before the Civil Judge (Junior Division) at Barrackpore and in the said suit, on the prayer of the petitioner, both parties were directed to maintain *status quo* in respect of the suit property. The petitioner also filed an application under Section 144(2) of the CPC against such illegal encroachment by the private respondents. The petitioner made representation before the respondent nos.2, 3, A.D.M. & L.R.O., North 24-Parganas, Barasat, the Commissioner of Police, Barrackpore Police Commissionerate, North 24-Parganas and also to the Inspector-in-Charge, Shibdaspur Police Station, Kolkata, however, the same has not been considered as yet. Hence this writ petition.

Mr. Sandip Ray, learned Advocate for the petitioner submits that the private respondents have made *kuccha* construction encroaching the land of the petitioner without proper permission from the concerned authorities as per law. The petitioner made representation before the appropriate authority for redressal of his grievance, however, no steps have been taken as yet. He seeks for a direction for consideration of the representation of the petitioner by the authority concerned.

Mr. Lalit Mohan Mahata, learned Additional Government Pleader appearing on behalf of the State submits that it is the case of the petitioner that the

structure made by the private respondents is a *kuccha* construction, therefore, there is no requirement for taking permission for such construction as per the Rule. Further no representation has yet been made before the local Gram Panchayat, which is the appropriate authority for redressal of the grievance of the petitioner. Thus, the present writ petition is misconceived one. He seeks for dismissal of the writ petition.

Mr. Prantick Ghosh, learned Advocate representing the private respondents submits in the similar fashion.

Upon going through the writ petition as well as the representation made before the authority concerned it is found that admittedly the structure made by the private respondents is a *kuccha* construction with tin boundaries and tin sheds for the purpose of cycle repairing shop.

Rule 19 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 provides as follows:

“19. Exemption from permission.—(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 :

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.”

Bearing in mind the aforesaid Rules, since the structure is *kuccha* with tin boundaries and tin shed, there may not be a requirement for permission. Be that as it may, considering the fact of the case, it is left open to the petitioner to approach the local Gram Panchayat for redressal of his grievance.

With the aforesaid observation, the writ petition being **WPA 12779 of 2024** stands disposed of.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)