

25.08.2025
Item No. 204
Ct. No. 42
AN

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 15861 of 2024

Abir Kumar Sarkar
vs.
The State of West Bengal & ors.

Mr. Iftekar Munshi
Mr. Oishik Chatterjee
... for the petitioner

Mr. Lalit Mohan Mahata, ld. AGP
Mr. Jahar Datta
... for the State

Mr. Madhu Jana
... for respondent no. 3

Mr. Partha Ghosh
Mr. Amal Kumar Datta
Mr. Debashis Das
Mr. Bratin Suin
... for respondent nos. 8 & 9

1. By the present writ petition, the petitioner seeks for demolition of the illegal and unauthorised construction made by the private respondents over 'bastu' land at Plot No. 1658, J.L. No. 32, Khatian No. 55 measuring about more or less 2 decimals under Police Station Andal, District Paschim Burdwan.
2. The petitioner contends that his grandfather namely Haripada Sarkar was the absolute owner of the property-in-question. During his life time, his grandfather executed a Will on 30th July, 1967. On demise of his grandfather, the said Will was probated

in O.S. Case No.7 of 2009 before learned Additional District Judge, 14th Court, Alipore, on 18th December, 2009. Upon grant of probate, his father Ardhendu Sekhar Sarkar and two uncles namely Purnendu Prakash Sarkar and Sukhendu Bikash Sarkar became the joint owners. The subject land in due course of time was transferred to Smt. Anjali Sarkar, wife of Sukhendu Bikash Sarkar and she became the lawful owner of the subject land which would be evident from the record of rights till her death. The right, title and interest of the said property devolved upon the petitioner Abir Sarkar, Shefali Sarkar and Arghya Kusum Sarkar who are in absolute possession of the subject land. The private respondents without obtaining any permission or sanctioned building plan from the concerned authority, raised illegal and unauthorised construction of permanent nature over the subject land. The petitioner made representation on 11.01.2022 and also subsequent thereto through his authorized agent and advocate on 22.02.2022. Since then no steps have been taken. Hence the writ petition.

3. Mr. Iftekar Munshi, learned advocate for the petitioner submits that the petitioner is one of the co-owners of the subject land. The private respondents have illegally made unauthorised construction over the subject land. Inadvertently, averments have been made in the writ

petition that Smt. Anjali Sarkar is the owner of the property. Be that as it may, the petitioner, one Shefali Sarkar and Arghya Kusum Sarkar are the absolute owners and possessor the subject land. The name of Smt. Anjali Sarkar has been wrongly recorded in the record-of-rights out of inadvertence. He seeks that matter be relegated to the Pradhan, Khandra Gram Panchayet to consider the representation of the petitioner.

4. Mr. Lalit Mohan Mahata, learned Additional Government Pleader representing the State submits that the construction has been made under the *Indira Awas Yojana Scheme*. As per Rule 19 of the West Bengal (Gram Panchayet Administrative) Rules, 2004, no permission is required for construction of house under poverty alleviation program. He seeks for dismissal of the writ petition.
5. Mr. Partha Ghosh, learned advocate appearing for the private respondent nos. 8 and 9 also submits in the similar fashion that the private respondents are poor persons who have constructed the building by the funds allocated to them under the *Pradhan Mantri Awas Yojana Scheme* (previously *Indira Awas Yojana Scheme*) and only to cause disturbance to the peaceful enjoyment of their property by the private respondents this present writ petition has been filed. The petitioner

has no connection with the subject land. He also seeks for dismissal of the writ petition.

6. Mr. Madhu Jana, learned advocate appearing for the respondent no. 3, the Pradhan, Khandra Gram Panchayet submits that the petitioner is not the resident or the voter of the concerned Gram Panchayet and he has got no connection over the property in question. The private respondents have been residing for last 20 years upon construction of house, which has been undertaken under the *Indira Awas Yojana* Scheme.
7. Upon perusal of the averments made in the writ petition, it is found that it has been pleaded that one Haripada Sarkar was the absolute owner of the property and upon demise of Haripada Sarkar, the Will executed by him on 30th July, 1967 was probated in O.S. Case No. 7 of 2009 before Additional District Judge, 14th Court, Alipore and his three sons viz. Ardhendu Sekhar Sarkar, Purnendu Prakash Sarkar and Sukhendu Bikash Sarkar became the joint owners of the subject land in equal share. It is also averred that in due course of time, Smt. Anjali Sarkar, wife of Sukhendu Bikash Sarkar became the lawful owner of the subject land by way of transfer and her name has been duly recorded in the record-of-rights.
8. Learned counsel for the petitioner submits that such recording has been made inadvertently.

9. Upon perusal of the annexure P-2, at page 23 of the writ petition, it is found that the name of Smt. Anjali Sarkar has been recorded to the extent of 2 decimals of land within Dag No. 1658 which is the subject land in the present writ petition. It is pertinent to note that no such application has been made for correction of the record of rights either by the petitioner or any other legal heirs. Therefore, the contention of the learned counsel for the petitioner that such recording is an inadvertent mistake is not acceptable. Thus, as averred in the writ petition, the fact remains that said Smt. Anjali Sarkar is the owner of the subject land and, therefore, the petitioner has no connection with the property in question.

10.

Moreover, the reports filed by the State as well as the Khandra Gram Panchayet shows that the construction has been undertaken on the funds sanctioned under the *Indira Awas Yojana* Scheme. Rule 19 of the West Bengal (Gram Panchayet Administrative) Rules, 2004 provides that no permission of the Gram Panchayet shall be required for construction of the house under the poverty alleviation program. Considering the above, the writ petition falls short of merit and the same is liable to be dismissed.

11.

Accordingly, the writ petition being no. **WPA 15861 of 2024** stands dismissed.

12. Consequently, connected applications, if any, also stand dismissed.

13. Interim orders, if any, stand vacated.

14. There will be no order as to costs.

15. Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Bivas Pattanayak, J.)