

A638

11-12-2025

AKG

Ct. 15

WPA 19961 of 2024
Nimai Saha
Vs.
The State of West Bengal & Ors.

Mr. Pankaj Halder,
Ms. Seuli Banerjee

...for the Petitioner

Mr. Amitava Mitra,
Mr. Prabir Kumar Ray

...for the State

This writ petition exemplifies a recurring trend whereby disputes of a purely civil nature, arising between private individuals, are sought to be reframed as claims invoking the public law jurisdiction of this Court.

The petitioner asserts that he and respondent nos. 8 and 9 are co-sharers in respect of Plot No. 643 under J.L. No. 005, Mouza – Sarberia, South 24 Parganas. His grievance is that respondent nos. 8 and 9 have undertaken construction over the said plot without his consent and without obtaining any approval from the Panchayat Authority.

Learned counsel for the petitioner has invited the attention of this Court to page 21 of the writ petition, submitting that despite a representation allegedly made before the Panchayat Authority, no action has been taken till date.

Reliance has been placed on the judgment dated January 9, 2019 in W.P. No. 18273 (W) of 2018 (*Rejaul Laskar & Ors. v. State of West Bengal & Ors.*) and the

judgment dated February 14, 2025 in MAT 75 of 2025 (*Sanyasi Naskar & Ors. v. Ajit Naskar & Ors.*), to contend that the consent of all co-sharers is indispensable before raising any construction.

This Court is unable to accept such a proposition. The judgments cited at the Bar turned on entirely different factual matrices: the first concerned the installation of a mobile tower, and the second pertained to change in the classification of the land and a request for regularisation of an “as made” plan in the absence of consent from a co-sharer. Neither of these decisions lays down any principle mandating that consent of co-sharers is a condition precedent for construction by another co-sharer in his own possession.

Indeed, there is no absolute prohibition against construction by a co-sharer on undivided property under his possession. This principle stands affirmed by the Division Bench decision reported at **(2008) 2 CHN 396 (Yograj Gurung v. Aikon Network Marketing Private Limited)**.

What decisively persuades this Court to decline interference is the conduct of the petitioner. The petitioner himself has filed a photograph dated July 30, 2024, which unmistakably depicts the substantially completed two-storied construction. Yet, the writ petition came to be filed only on August 5, 2024. The photograph clearly indicates that the

petitioner stood by and permitted the construction to progress to near completion before approaching this Court.

Such conduct attracts the well-established principles of delay, acquiescence, and want of bona fides. A Civil Court, applying settled principles of equity, would decline an injunction in favour of a litigant who consciously allows a structure to be raised and then seeks its demolition. The writ jurisdiction under Article 226, being equally discretionary and grounded in equitable considerations, cannot be invoked to resurrect an equitable right that the petitioner has clearly forfeited. The writ court cannot be utilised as an alternative forum to secure indirectly what is not obtainable directly in a civil proceeding. At best, a petitioner in such circumstances may seek a direction upon the statutory authority to act in accordance with law; no personal or equitable relief may be granted.

In the present case, the petitioner's representation before the Panchayat Authority dated July 30, 2024 reveals that his primary grievance is that the construction has been undertaken without his consent as a co-sharer. It is not his case that the private respondents have constructed beyond their area of possession. The allegation regarding absence of a sanctioned plan is inextricably intertwined with the underlying civil dispute and appears to have been raised only to impart a semblance of a public law character to what is

fundamentally a private conflict.

For the reasons aforesaid, this writ petition must fail and is, accordingly, dismissed with costs assessed at Rs. 10,000/-.

Accordingly, **WPA 19961 of 2024** stands disposed of.

Urgent certified *website* copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)