

08.01.2026
SI No.A 703
Ct. No.15
S.A.

WPA 25315 of 2024

Smarajit Sarkar
-vs-
The State of West Bengal & Ors.

Mr. Arnab Dutt
Ms. Labani Dey
...for the petitioner
Mr. Manoj Malhotra
Mr. Bikramjit Mondal
...for the State
Mr. Sounak Bhattacharya
Mr. Sounak Mandal
...for respondent no.5

The petitioner alleges that unauthorised construction has been carried out at the behest of Respondent No. 5. It is alleged that Respondent No. 5 has constructed a cantilever on the first floor of the building, thereby encroaching upon a portion of the passage claimed to belong to the petitioner.

Learned counsel appearing for Respondent No. 5, on the other hand, submits that the building has been constructed pursuant to a sanctioned plan obtained from the concerned Panchayat Authority.

It is not in dispute that the petitioner has already instituted a title suit before the competent civil court in respect of the alleged encroachment upon the private passage.

A perusal of the plaint filed in the said suit, being Title Suit No. 536 of 2022 pending before the

Court of the Civil Judge (Junior Division), 1st Court, Baruipur, reveals that the petitioner has sought removal of the very same alleged unauthorised construction which is the subject matter of the present writ petition.

The petitioner cannot be permitted to prosecute two parallel proceedings in respect of the same alleged unauthorised construction.

Furthermore, it appears that the dispute between the parties is purely civil in nature, wherein the petitioner alleges encroachment upon his land by the respondents. The petitioner cannot be permitted to impart a public law colour to a dispute that is essentially civil in nature, particularly at such a belated stage. The writ court cannot be utilised as an alternative forum to indirectly secure relief which is not directly obtainable in a civil proceeding.

The allegation regarding the absence of a sanctioned plan is inextricably intertwined with the underlying civil dispute and appears to have been raised only to lend a semblance of a public law character to what is fundamentally a private conflict.

The dismissal of the writ petition shall, however, have no bearing on the pending civil suit between the parties.

Accordingly, **WPA 25315 of 2024** stands dismissed.

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

(Kausik Chanda, J.)