

M/L 531
31.01.2023
Court. No. 19
GB

W.P.A. 9115 of 2022

Sujan Kumar Hazra
VS
The State of West Bengal & Ors.

*Mr. Himadri Barua,
Mr. Biswajit Das*

...for the Petitioner.

*Mr. Arindam Chattopadhyay,
Ms. Lipika Chatterjee*

...for the State.

Mr. Siddhartha Sarkar

...for the Respondent Nos.7 & 8.

Affidavit-of-service filed in Court today, be kept with the record.

The petitioner submits that the respondent nos.7 and 8 who are the co-sharers along with the petitioner and others in respect of the Plot Nos.16, 17, 18, 19, 43 and 43/466 started raising a construction without any permission and had also encroached a private passage used by the co-sharers. The alleged private passage is on Plot Nos.16 and 17. Allegedly, the same has been used since long by the co-sharers for their ingress and egress.

The learned advocate for the respondent nos.7 and 8 denies such allegation. According to the said respondents, encroachment over a private passage cannot be decided by the panchayat authorities. The learned advocate submits that if the petitioner has any grievance with regard to encroachment by a co-sharer, the remedy of the petitioner would be before the civil court. The learned advocate further submits that in the absence of any partition, all the co-sharers have a right over every inch of the property.

This Court is not inclined to decide the issues of co-sharership, shares enjoyed by the respective co-sharers and the allegation of encroachment over any common private passage.

The Block Development Officer, Debra Development Block has filed a report. A copy of a letter written by the Pradhan, Duan-II gram panchayat dated May 24, 2022 has been annexed to the report. It appears that no permission had been given to the respondent nos.7 and 8 for construction on Plot Nos.16 and 17 under Mouza-Harimpur within Debra block and the construction which was being raised was without any permission from the authority.

Under such circumstances, the writ petition is disposed of with a direction upon the Duan II gram panchayat to treat the writ petition as a representation and dispose of the same in accordance with law.

While doing so, the following procedure shall be adopted:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos.7 and 8. An advance notice of inspection shall be served upon the petitioner, the respondent nos.7 and 8 and on all other interested parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.

b) In case, it is found on preliminary inspection that the construction was without permission and was

continuing, the authorities may take interim measures, by stopping such construction.

- c) A report of such inspection shall be prepared along with a sketch map, indicating the extent and nature of unauthorized construction, if any.
- d) Such report shall be handed over to the parties. The question of title, possession and boundary dispute etc. shall not be decided by the panchayat authorities. The questions to be decided by the panchayat authorities would be whether the construction has been made without any permission or in violation of the building rules.
- e) A hearing shall be given to the petitioner and the respondent nos.7 and 8. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority. All points raised by either party, will be decided.
- f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of Section 23(5) of the West Bengal Panchayat Act, 1973.

The court has not gone into the merits of the claims of the petitioner and the issues involved shall be decided independently.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)