

(2018) 01 CAL CK 0051
In the Calcutta High Court
Case No : 25173(W) of 2013

Tushar Kanti Haldar & Anr.

APPELLANT

Vs

The State of West Bengal & Ors.

RESPONDENT

Date of Decision : 03-01-2018

Acts Referred:

Citation : (2018) 01 CAL CK 0051

Hon'ble Judges : Mir Dara Sheko

Bench : Single Bench

Advocate : Atarup Banerjee, Bapin Baidya, Amit Prakash Lahiri, Ayan Banerjee, Mainak Bose, Loknath Bhattacharya

Final Decision : Disposed oFF

Judgement

1. Since pursuant to an order dated November 29, 2017 this writ petition is heard simultaneously with WP No.11484(W) of 2007 which is disposed of just now, upon hearing Mr Bose appearing for the private respondents and Mr Atarup Banerjee assisted by Mr Baidya representing the writ petitioners and also Mr Lahiri for the State, the matter is also taken up for disposal on merits.

2. The text of the instant writ petition virtually is the replica up to paragraph no.11 of earlier WP No.11484(W) of 2007. As it is apprised by Mr Atarup Banerjee for the writ petitioners that this writ petition has been filed since the private respondents were trying to start construction of "building encroaching the portion of land of the said public road without having any sanction building plan." Mr Banerjee submitted that taking wrong recorded mouza map, on which the WP No.11484(W) of 2007 has been disposed of, the private respondents, being the owners of the land situates just opposite to the land of the writ petitioners pertaining to the plots no.163/339 and 163/341 had encroached on the portion of public road by raising constructions.

3. Mr Bose in the tune of the affidavit-in-opposition submitted that there was no question of starting any construction over any public road, rather the private

respondents raised constructions upon their own plot wherein a homeopathy dispensary was being operated, and that said construction since was lying there since 1980 for which, of course, there was post facto approval of the gram panchayat. According to him, the instant writ petition should be dismissed.

4. Now, on the face of the materials on record reveals that the then Prodhan of Debipur gram panchayat had accorded permission to one Niranjan Kumar Naskar (the respondent no.9) to erect structure/building over the plots no.148, 163/339 pursuant to his application dated January 8, 1986. Mr Banerjee took exception that in the Panchayat Act, 1973 there was no provision for post facto approval, since according to the assertion made in paragraph 3(a) of the affidavit in opposition, the respondents asserted about completion of construction some times in the year 1980. Be that as it may, the writ petitioners within the periphery of the instant writ petition cannot come with a third case for which he did not seek for any relief. Of course, this court cannot approve any such post facto approval if it is not approved by the Act itself. The same accordingly remains open for consideration of the gram panchayat authority. To explicit myself, the matter may remain open to the concerned gram panchayat authority to take legal steps or even to demolish the structure standing, if any, upon the plots under reference, if the post facto approval is otherwise illegal in limini, or the construction or part thereof claimed by the private respondents as of their own situate over Government's property.

5. Equally, this court is not shy to give clear indication upon the gram panchayat authority or the State even to demolish the structure, be it pucca or temporary, if the same is lying anywhere upon the public property, i.e. beyond the plots no. 148 and 163/339 owned and possessed by the private respondents; and if the circumstance so necessitates, the decision shall be taken by the appropriate officer or authority in accordance with law.

6. Now coming back to the lis for which the writ petition has been filed this court observes had there been any encroachment over any part of the property of the writ petitioners, the remedy cannot lie within the writ court; because had there been any truthfulness it would be a private dispute which would be adjudicated before the competent court of civil jurisdiction.

7. In view of the above, the instant writ petition is disposed of simultaneously with the earlier WP No.11484(W) of 2007.

8. The interim order earlier passed in this case accordingly is merged with such final decision.

9. Certified photocopy of this order, if applied for, shall be given to the parties.