

14.09.2020

Srimanta

Sl. No. 04

Ct. No. 13

IA No. : CAN/1/2020(Old No.CAN/4455/2020)
in
W. P. No. 6160 (W) of 2020
[Via Video Conference]

Raghunath Dutta
-Vs.-
State of West Bengal & Ors.

Mr. Gazi Faruque Hossain, Adv.

...for the petitioner.

Mr. Bhaskar Prasad Vaisya, Adv.,

Mr. Arindam Chattopadhyay, Adv.

...for the State.

The chronological events leading to this writ petition are that the petitioner is admittedly full brother of the private respondent and both of them and their mother became the owner of the property on 17.06.1987. The plan for a three storied building was sanctioned by the Municipality on 10.08.1992. On 17.11.1992 private respondent sold out his one fourth share to the petitioner by a registered deed of sale being no. 7274. Municipality further sanctioned a plan for second floor construction with a rider validating for two years on 14.09.1993. The petitioner thereafter complained to the Municipality alleging unauthorized construction made by the private respondent on 12.06.2020 but the Municipality has not paid any response to the complaint as yet.

I have heard the learned Advocate for the petitioner and the learned Advocate for the State. Since there was no demarcation as such in respect of their shares partition suit was filed by filing a Title Suit No. 88 of 2011 before the Civil Judge (Junior

Division), 1st Court at Baruipur against the private respondent seeking declaration and injunction of the suit property and upon hearing the parties the learned Court on an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure was pleased to pass an order directing the parties to maintain *status quo* with regard to the nature and character of the suit property till the disposal of the suit property. Now, the issue pertaining to allocation and demarcation of the portion of the scheduled property is still pending for decision before the Court below but the private respondent has violated the order of *status quo* by raising illegal construction taking advantage of the pandemic situation by making construction over and above the first floor of the existing construction without any sanction and also making a shop room without sanction and his purchased plot covering and/or block the ingress and egress of both to the petitioner's ground floor premises. This is what their allegation in the present application and accordingly, the petitioner has sought for a direction upon the respondent nos. 3 and 4, the Municipal Corporation to pull down the unauthorized construction by the private respondent of Municipal Holding No. 171/B after giving the reasonable opportunity of being heard to all concerned with the help of police authorities, if required. I have taken note of the fact that the Municipality has already acknowledged the receipt of the complaint. Practically, the order as prayed by the petitioner cannot be entertained in this writ application in view of the pendency of the moot issue before the Civil Court where the petitioner has already invoked the jurisdiction for decision on the issue of encroachment. However, since allegation raised is that the private respondent is raising unauthorized

construction without the sanctioned plan that may be taken note of by the Municipal Corporation.

Accordingly, this writ application is disposed of with the direction upon the respondents concerned being the Baruipur Municipality to consider the complaint lodged by the petitioner upon giving opportunity to the private respondent of being heard and to see that whether at all any unauthorized construction is being raised or not and, if raised, then such a report may be placed before the Civil Court in a proceeding in the Title Suit.

Thus, this writ application is disposed of. Accordingly, IA No. : CAN/1/2020(Old No.CAN/4455/2020) is also disposed of.

The decision so made by the Municipal Corporation may be communicated to the parties concerned.

(Shivakant Prasad, J.)