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gd/ssd

FMA 328 OF 2020
IA NO: CAN/1/2019(Old No:CAN/4975/2019),
CAN/2/2021
PRANAB KUMAR NANDA & ORS.
VS
THE STATE OF WEST BENGAL & ORS.
(Through Video Conference)

Mr. Amit Baran Dash
..for the Appellants.

Mr. Robiul Islam
..for the State.

Mr. Debasish Das
..for the Respondent Nos.6 to 8.

The appeal is directed against the order of learned Single Judge dated 04.01.2019 whereby WP No.25230(W) of 2015 has been dismissed on the technical ground.

Learned Single Judge has dismissed the writ petition on the ground that the petition filed by the petitioner is in the nature of public interest litigation and that the petitioner has not impleaded the encroachers.

Having heard the learned counsel for the parties and on the minute perusal of the writ petition, we have noticed that the petitioner had approached the writ court with the plea that he is the owner in possession of Plot Nos.1863, 1864, 1865 and 1866 and has constructed his residential house etc. thereon and the

said land is situated just at the sides of Contai-Egra-Kharagpur Highway near Egra Bus Stop. The allegation of the petitioner in the writ petition is that the unauthorised and illegal constructions have been raised in front of his house, which has affected the ingress and egress to the house. The prayer in substance in the writ petition is to clear out the front portion of the petitioner's land and residential house by demolishing the illegal construction for proper ingress and egress. In view of this, we are of the opinion that the petition filed by the petitioner is not in the nature of public interest litigation but in the writ petition the petitioner is agitating his personal cause. Hence, the learned Single Judge is not justified in dismissing the petition on the ground that the petition is in the nature of PIL. Even otherwise, if the learned Single Judge had reached to the conclusion that the petition was in the nature of PIL, it could have been referred it to the Registry for registering it as such. So far as the issue of non-joinder of the parties is concerned, the counsel for the appellants has rightly drawn our attention to paragraph 3 of the writ petition wherein there is an allegation that the municipal authority has also done the encroachment and that the said municipal authority is impleaded as respondent in the matter. The petitioner was praying before the learned Single Judge for a

direction to the said statutory authority to perform their statutory duty and this aspect has completely escaped the attention of the learned Single Judge.

Having regard to the above, we are of the opinion that the matter should be sent back to the writ court for fresh decision in accordance with law. Hence, order dated 04.01.2019 passed by the learned Single Judge is set aside. The matter is sent back to the writ court for its fresh decision in accordance with law.

Appeal is accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

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