

17.03.2021
Sl. No.13
srm

C.O. No. 564 of 2021
Sri Pradip Kumar Saha
Vs.
Sri Sonatan Bakuli & Ors.

Mr. Mohit Chatterjee

...for the Petitioner.

This revisional application arises out of an order dated January 9, 2020 passed by the learned Civil Judge (Junior Division), 2nd Court, Serampore, Hooghly in connection with Title Suit No.176 of 2017. The petitioner is aggrieved by an order allowing the defendant No.1 permission to get water connection from Serampore Municipality on “Kha” schedule property.

The plaintiff is the owner of “Ka” schedule property, adjoining the “Kha” schedule property of which the defendant No.1 is the owner. The plaintiff’s case is that the defendant No.1 made some unauthorised construction on the western portion of “Kha” schedule property, which interfered with the enjoyment of light and air of the plaintiff in the “Ka” schedule property. Such unauthorised construction has been delineated as “kha-1” schedule in the plaint. “Kha-1” schedule is set out below:-

“A piece and parcel of unauthorised construction measuring about width of 6 (Six) feet in East-West and length of 10 (Ten) feet in North-South in the extreme western portion of the ground floor and width of 1 (One) feet in East-West and in length of 10 (Ten) feet in North-South in the extreme western portion of the first floor of the building comprised in Municipal holding No. 3/65/C, Firingi Danga Road, under P.O. Mallickpara, under P.S. Serampore, in the district of Hooghly which is within the ambit of Serampore Municipality, of the property described in the (KHA) schedule below and an unauthorised illegal septic chamber constructed in the extreme Western portion of the (KHA) schedule property which is specifically described in the (KHA-1) schedule below.”

The plaintiff prayed for declaration that the plaintiff was the owner of “Ka” schedule property and had the right to enjoy the light and air, declaration that construction being “Kha-1” schedule was unauthorized, permanent injunction restraining further construction and for an order of mandatory injunction of demolition of the unauthorized construction, i.e, “Kha-1” schedule.

Whether there has been any unauthorised construction and whether the contention of the plaintiff is correct or not are matters to be decided in the suit, upon evidence.

The defendant No.1 purchased the plot adjoining to the plot of the plaintiff, built a house and possesses the same. The said defendant filed an application for permission to instal water connection in the premises. Upon hearing the parties on contest, the learned Court below allowed the defendant No.1

permission to get new water connection in his own premises, but, without violating the order of injunction.

The plaint case is that the construction on the “Kha” schedule property of the defendant No.1 was done without leaving adequate gap between the two buildings, as a result of which the plaintiff could not enjoy light and air. Now the plaintiff wants to enlarge the scope of the plaint by objecting to supply of water to the premises of the defendant No.1, of which, admittedly, the defendant No.1 is the owner by purchase. Whether there has been any unauthorised construction in violation of the Municipal Building Rules, is a matter of trial and water supply being an essential service cannot be denied to a party till the disposal of the suit. Thus, this interlocutory order has been passed as a temporary measure so that the defendant No.1 can utilise and enjoy his property till the decision is reached in the suit. In any event, the defendant/opposite party No. 1 cannot claim any equity or advantage in the suit on account of any water connection and the ultimate result in the suit shall determine the issues between the parties. Moreover, the injunction is in the nature of a restraint upon the opposite party from raising any construction on “Kha-1” schedule of the property. It is no body’s case that the water connection would amount to

construction on the “Kha-1” schedule property and the learned court below has also directed that the injunction order should be obeyed while taking such water connection.

The decision relied upon by the petitioner in the matter of State of U.P. & Ors. vs. Roshan Singh (D) by L.Rs. & Ors. reported in AIR 2008 SC 1190, does not apply in this case, inasmuch as, the said judgment has been rendered in a different set of facts. It has been held that, when there are special laws guiding the subject matter in issue, then an application under Section 151 is not permissible for reliefs covered by such special statutes. In this case, the petitioner invoked the inherent power of the learned Court below for a permission to instal a water connection in his own premises as there is an order of injunction subsisting. Thus, the learned Court upon taking into consideration that supply of water is an essential service and a person cannot not live without water in his own premises, passed the order. The scope of the suit is not connected with any water connection and the ownership and possession of the defendant No.1 with respect to the “Kha” schedule property is not denied. At best, even if the suit succeeds, an order can be passed in respect of “Kha-1” schedule property (the alleged unauthorised portion) and not on the entire “Kha” schedule property. If there is any violation

of the injunction order during installation of such water connection, the plaintiff can always pray for appropriate orders.

It is an absurd proposition propounded by the plaintiff that till the disposal of the suit and the adjudication of the unauthorised construction, the defendant No.1 shall live without water in his own premises.

With reference to Rules 99 and 151(ii) of the West Bengal Municipal (Building) Rules, 2007, the said Rules cannot be made applicable at this stage, when the learned Court below has not yet come to a finding that the construction is being made in deviation of the plan or that there is any unauthorised construction at all. These rules will be relevant only when there is a declaration that the construction over “Kha-1” schedule property is unauthorised and an order of mandatory injunction is passed for demolition. Moreover, the municipal authorities who are defendants in the suit have not raised any objection with regard to such issue.

Thus, I do not find any reason to interfere with the order impugned.

The revisional application is dismissed.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)