

27.04.2021

Sl. No. 12

Srimanta

Ct. No.-17

D/L

**IA No.: CAN/1/2021
in
MAT/414/2021
(Via Video Conference)**

**Mundamari Ushayatan Math & Ors.
-Vs.-
Mundamari Ushananda Vidyapith (Higher Secondary)
School & Ors.**

Mr. Rahul Karmakar, Adv.

...for the appellants.

Mr. Bhaskar Vaisya, Adv.

...for the State.

Mr. Soumita Ghosh, Adv.

...for the private respondent.

By consent of the parties the appeal and the application are taken on the day's list and disposed of by this common order. The appeal is at the instance of Mundamari Ushayatan Math and two other appellants who represented themselves as the Secretary and the member of the said Math. The appellant nos. 2 and 3 are respondent nos. 9 and 10 in the original writ petition. The learned Counsel for the appellants submits that in view of the disputes raised in the writ petition which is essentially civil in nature the Learned Single Judge ought not to have directed the District Magistrate to decide such civil dispute. Our attention is drawn to a suit filed by the appellant no. 2 in the capacity as Secretary on behalf of the Managing Committee of Trust of Mundamari Ushayatan Math against the President and Secretary of Mundamari Ushananda Vidyapith (Higher Secondary) School.

The suit was filed in 2015 claiming, *inter alia*, that the Mundamari Ushayatan Math has no right, title and interest to hold and possess the suit properties mentioned in the schedule to the plaint as well as a decree for permanent injunction restraining the President and the Secretary of the said Vidyapith from raising any illegal construction over the suit property by demolishing the school boundary and causing any disturbance and annoyance to the plaintiff. In the writ petition filed by the Headmaster-cum-Secretary of the Managing Committee and the President of the Managing Committee of the School it is alleged that long back the entire property was recorded in the name of the School but the record of right was altered at the intervention of the Ashram and/or Math in connivance with the B.L.& L.R.O. In spite of written objections based on such altered records of rights members of Mundamari Ushayatan Math are transferring, alienating and/or leasing out properties covered by the registered Deed of Gifts and/or Arpannama on the basis of which the writ petitioner no. 1 established as a Government aided school with charitable object holds the said property where, *inter alia*, include a huge water bodied property which could not be settled and/or transferred to any person of the present appellants by the Mundamari Ushayatan Math or its Managing Committee.

On the allegation that the present appellant nos. 2 and 3 are causing hindrance in the normal functioning of a school and there are various security issues involved as it runs a girls' hostel, a representation was made to the District Magistrate requiring the help of the Learned District Magistrate. Complaints have also been made to the Officer-in-Charge of the local police station and various other offices.

It appears from the contention raised by the appellants and the writ petitioners that there is a dispute in the

Managing Committee and this has led to actions being taken by the Ashram which, according to the writ petitioners, are detrimental to the interest of the students and also not authorized in view of the Arpannama/Deed of Gifts relied upon by the writ petitioners as to justification of its existence and function.

We agree with Mr. Karmakar that possession of land and/or encroachment are matters that are essentially civil in nature and a suit is pending in respect of the properties which also incidentally mentioned in the letter of complaint. However, having regard to the nature of the order passed by the Learned Single Judge directing the District Magistrate to dispose of the representation it would be preposterous for us to observe that the District Magistrate would likely to pass an order which would be prejudicial to the appellants. The District Magistrate and the law enforcing authorities in the district are required to ensure that there is no breach of law and order and security of the school and students are secured. The apprehension as to the security of the staff member of the school and the students are to be assessed by the District Magistrate. The District Magistrate is required to ensure that the functioning of the school is not disrupted. The order does not in any way decide the right, title and interest of the suit properties or the properties mentioned in the writ petition as it is the elementary only the Civil Court being the appropriate authority is entitled to decide the issue in relation to the properties. The direction for survey of the land also cannot prejudice the appellants or the writ petitioners since it is necessary to have correct recording in the record of rights following the procedure prescribed under the law to obviate any future confusion or conflict between the parties. The requirement to carry out a survey is not being disputed by any of the parties. The claim for

encroachment can only be decided once a proper survey is made.

On the basis of the aforesaid consideration we are not inclined to interfere with the order passed by the Learned Single Judge. Our observation shall not influence the Learned District Magistrate in disposing of the representation after hearing the parties as directed by the impugned order and also the pending suit between the parties.

The appeal and the application is disposed of, however, without any cost.

(Soumen Sen, J.)

(Saugata Bhattacharyya, J.)