

7.
3.05.2021
S.D.

W.P.A. 9870 of 2021

Asit Kumar Paul @ Asit Paul
Vs.
Howrah Municipal Corporation & Ors.

Mr. Jayanta Samanta

...For the Petitioner.

The writ petitioner and the private respondents are stated to be the owners of the plot of land situated at 13B, Mahadeb Banerjee Lane, Post Office – Kadamtala, Police Station – Bantra, District – Howrah, Pin – 711101. The petitioner has alleged that an illegal construction has been made by the private respondents beyond the limit of the sanctioned plan granted by the Howrah Municipal Corporation. Accordingly, the order of stay of further construction has been sought for on the contention that the petitioner's share in the property will be jeopardized by illegal means and the private respondents will carry on the illegal work as by disobeying the law of land.

I have heard learned counsel for the petitioner. It would appear that the petitioner has sought for issuance of

writ as per the prayers set out in the application which are as follows:-

“a) A Writ of and/or Writs of and/or in the nature of Mandamus, directing the respondent authorities for restraining the private respondents no. 4 and 5 from illegally constructing further floor at 13B, Mahadev Banerjee Land, Post Office – Kadamtala, Police Station – Bantra, District – Howrah, Pin – 711101, in-limine;

b) A Writ of and/or Writs of and/or in the nature of Mandamus, directing the respondent authorities to demolish the fourth floor of the building, at present, as constructed at 13B, Mahadev Banerjee Land, Post Office – Kadamtala, Police Station – Bantra, District – Howrah, Pin – 711101, at cost of the respondent no. 4 and 5;

c) Ad-interim order, restraining the respondent no. 4 and 5, from carrying out any sort of work in the illegally constructed building at 13B, Mahadev Banerjee Land, Post Office – Kadamtala, Police Station – Bantra, District – Howrah, Pin – 711101 till disposal of the present writ application;

d) A Writ of and/or Writs of and/or in the nature of Mandamus directing the respondents no. 6 to take a strict vigil thereof, at 13B, Mahadev Banerjee Land, Post Office – Kadamtala, Police Station – Bantra, District – Howrah, Pin – 711101, round the clock, so that no further illegal construction is made in the aforesaid premises;

e) Rule NISI in terms of prayers (a) to (c) above;

f) A Writ of or Writs of or in the nature of Certiorari, directing the respondents to transmit and certify all the records of the instant case before this Hon’ble Court, so that the conscionable justice may be administered by perusing the same;

g) Such other or further relief or relieves and/or or orders direction or directions as Your Lordships, may deem fit and proper, for the ends and interest of justice.”

My attention is invited to page 5 wherefrom it would appear that earlier, a writ application being W.P.A. No. 3388

of 2021 was filed by invoking the writ jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India alleging similar contention of carrying out illegal construction on the suit plot. The said writ application was disposed of by a Coordinate Bench of this Hon'ble Court by order dated 19.2.2021 with the direction upon the Howrah Municipal Corporation to take necessary step for consideration of representation filed by the petitioner by giving an opportunity of being heard to all necessary parties including the petitioner. But this present writ application is devoid of the reasoned order having been passed by the Howrah Municipal Corporation pursuant to the said direction of the Coordinate Bench of this Hon'ble Court. The annexure "P 2" reflects that the writ petitioner was given an opportunity of being heard in respect of the objection against authorized construction. Therefore, the respondent/Howrah Municipal Corporation is well in the knowledge of any construction being raised at the suit plot. It would also appear from the order dated 19.2.2021 passed in the earlier writ petition that a Title Suit being 975 of 2016 was pending before the Court of learned Civil Judge, Junior Division at Howrah relating to suit plot filed by the writ petitioner as plaintiff against the private respondents. It is pointed out that the said title suit

pending before the Civil Court has been withdrawn by the petitioner. The order of withdrawal of the suit has not been pressed in service before this Court. Admittedly, the petitioner had filed the suit against the private respondent no. 4 for declaration in respect of his title for decision in accordance with the evidences to be adduced by the parties to the suit. It is not understood what compelled the petitioner to withdraw the suit which in the right forum for seeking declaration of title in the property in suit and other prohibitory relief by way of injunction.

Therefore, I do not find any justification in further vindicating similar prayer as renewed by the writ petitioner in the instant writ petition.

Accordingly, the writ petition being W.P.A. No. 9870 of 2021 is disposed of as dismissed, however, without any order as to costs, but with this observation that, if at all, the Howrah Municipal Corporation finds any illegal construction being raised by any of the parties, the authority can very well invoke its power under the Rule.

(Shivakant Prasad, J.)