

Sl. 416
23.12.2021
Ct. No. 15
tbsr

WPA 9325 of 2007
Madan Mohan Ghosh Thakur & Ors.
-vs.-
The Hooghly Chinsurah Municipality & Ors.

Mr. Prabal kr. Mukherjee,
Mr. Rajat Dutta
.....for the petitioners

Mr. Tapas Kr. Ghosh,
Mr. Tanmoy Chowdhury
.....for the Municipality

In spite of notice upon the respondent no. 6, no one appears on behalf of the respondent no. 6 today and pursuant to the direction passed by this Court previously, an affidavit-of-service has been filed today which is taken on record.

The sole prayer couched in this writ petition is supply of water to the premises of the writ petitioners which was turned down by a Co-ordinate Bench when this writ petition was moved at the motion stage, on the premise that an objection was raised by the private respondent that the writ petitioner was not in possession of the property in question. Considering such submission, there was a direction by the Co-ordinate Bench on 2nd August, 2007 for exchange of affidavits within certain time and hearing of the writ petition was directed after exchange of affidavits. The writ petition has come up in the list for final hearing.

Mr. Prabal Kr. Mukherjee, learned senior advocate appears on behalf of the writ petitioners and submits that neither affidavit-in-opposition has been filed by the respondent no. 6 nor by the respondent Municipality.

The attention of this Court has been drawn to a letter dated 22nd June, 2006, issued by the Chairman of Hooghly Chinsurah Municipality wherefrom it appears that the water connection as prayed for by the writ petitioners could not be provided based on objection raised on behalf of the said respondent no.6 due to pendency of a civil suit.

In view of such letter dated 22nd June, 2006 till date the writ petitioners are languishing for non-supply of water to their said property. This Court has been taken to the order passed by Civil Judge (Junior Division), Hooghly on 6th October, 2004, the relevant part of the same is quoted below :

“that the petition under Order 39 rule 1 and 2 read with Section 151 CPC filed by the plaintiffs is disposed of on contest without costs. Let there be an order of status quo in respect of the suit property. Both parties are directed to be refrained from construction, alienation and any other mode of transfer over the suit property till the disposal of

the suit on the whole. Earlier order of Injunction stands modified hereby.”

It is submitted on behalf of the petitioners though the Title Suit Being T.S. No. 126 of 2004 still remains pending for final adjudication but on perusal of the said order dated 6th October, 2004 it does not appear that the said order at all restrains the concerned Municipality from providing supply of water to the property of the writ petitioners.

This Court has also copiously considered the order dated 6th October, 2004 passed by the Civil Court wherefrom it appears the parties to the suit were restrained from construction, alienation and any other mode of transfer over the suit property till disposal of the suit. In addition thereto since the private respondent has not filed an affidavit-in-opposition to this writ petition in terms of the direction passed by a Co-ordinate Bench on 2nd August, 2007 in order to substantiate before this Court that the writ petitioners are not in possession of the property in question, therefore, today this Court finds no impediment in giving direction upon the concerned authority of Hooghly Chinsurah Municipality to provide supply of water to the property in question of the writ petitioners. An application in the prescribed

format has been preferred by the writ petitioners dated far back on 4th October, 2005, page 38 of the writ petition, which is still lying pending before the Municipality.

In view of the aforesaid discussion, this Court directs the concerned authority of Hooghly Chinsurah Municipality to act on the basis of the said application dated 4th October, 2005 and provide water supply to the property in question of the writ petitioners within a period of fortnight from this date if there is no other legal bar in supply water to the petitioners' property. However, it is made clear that while acting on such application of the writ petitioners dated 4th October, 2005 the order passed by the Civil Court dated 6th October, 2004 will not stand in the way.

It is also made clear that the order passed by this Court on this writ petition will not create any equity in favour of the writ petitioners in the pending Title Suit being T.S. No. 126 of 2004.

The writ petition stands disposed of.

There shall be no order as to costs.

Urgent Photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)