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18.11.2021
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WPA No.12142 of 2021

Kamal Kumari Devi Model School
Vs.
The West Bengal State Electricity Distribution
Company Limited and others

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal

.... for the petitioner

Mr. Sujit Sankar Koley

....for the WBSEDCL

Mr. Amal Kumar Mukhopadhyay
Ms. Pinki Saha

....for the respondent no.3

Affidavit-of-service filed in court today be kept
on record.

The grievance of the petitioner-school is that the private respondent has complained to the distribution company that the petitioner-school has taken its electric connection from a transformer installed illegally on the property of the private respondent. However, learned counsel for the petitioner submits that the property is undemarcated and, at best, the private respondent is a co-owner with the petitioner-school in respect of the entire plot. As such, since

there cannot be any specific demarcation in the absence of any previous partition by metes and bounds, it is beyond the scope of the District Magistrate to direct the B.L. & L.R.O. to submit a report and adjudicate the dispute raised by the private respondent.

Learned counsel also places reliance on a previous order of this court, where a Division Bench of this court had been pleased to observe that a prior order of a co-ordinate Bench, wherein the District Magistrate was directed to resolve the issue within a particular time after giving an opportunity of hearing and considering a report to be filed by the B.L. & L.R.O, would not be decisive on any issue agitating the question of title or possession of any of the parties in any independent proceedings between the parties.

Learned counsel submits that, as such, in the absence of any formal partition, the District Magistrate acted beyond his jurisdiction in directing the B.L. & L.R.O. to submit a report, without interpreting in proper perspective the observations of the Division Bench.

Learned counsel for the WBSEDCL submits that the electric connection to the disputed transformer has not been disconnected till date.

Learned counsel appearing for the private respondent submits that the District Magistrate ought to have been impleaded in the present writ petition, since the present challenge under Article 226 of the Constitution of India has been preferred against the order of the District Magistrate.

That apart, it is argued on behalf of the private respondent that it was well within the jurisdiction of the District Magistrate to pass the direction impugned before this court in the writ petition, particularly in the light of the observations of the learned Single Judge of this court.

A perusal of the order dated January 21, 2019 passed in AST No.2 of 2019 by a co-ordinate Bench of this court indicates that the court had directed the District Magistrate to resolve the “issue” within the conspectus of Rule 3 of the Works of Licensees Rules, 2006.

A perusal of the said Rule indicates that the scope of the same is limited to the extent that a licensee may carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior

consent of the owner or occupier of any building or land and to fix any support of overhead line etc. The District Magistrate, within the purview of the said Rule, has been empowered to grant permission in writing in the event any owner or occupier of the building or land-in-question raises objection in respect of the works to be carried out. Further, in the event the owner or occupier of any building or land on which such work has been carried out validly objects to the existence of any such installation, the District Magistrate may, by order in writing, direct any such work, support etc. to be removed or altered.

However, it is entirely beyond the jurisdiction of the District Magistrate, within the ambit of Rule 3 of the Works of Licensees Rules, 2006 (for short “the 2006 Rules”), to adjudicate any civil dispute between the parties.

In any event, Section 9 of the Code of Civil Procedure confers such power of adjudication specifically on the civil court, if read in conjunction with the relevant provisions of the Specific Relief Act, 1963.

Moreover, the Division Bench clearly indicated that the direction of the learned Single Judge did not decide any title or possession in respect of the property-in-dispute between the private parties. Read

together, the order dated January 21, 2019 passed by the learned Single Judge and the Division Bench order dated April 10, 2019 passed in connection with MAT 217 of 2019, indicate that the direction on the District Magistrate was restricted merely to the question as provided in Rule 3 of the 2006 Rules.

However, since, in the present case, there is a dispute as to the right, title and interest of the private respondent vis-à-vis the petitioner in respect of the property-in-question and as to whether the property was ever partitioned by metes and bounds, it would be beyond the scope of the jurisdiction of the Magistrate to adjudicate such issue.

In the peculiar circumstances of the case, a determination under Rule 3 of the 2006 Rules would yield no result at the present juncture and, unless a competent civil court decides the issue of title/partition and/or passes any interim order in respect of the right, title and interest of the petitioner and the private respondent respectively, there cannot be any fruitful result of the inspection as directed by the District Magistrate.

As regards the alleged non-impleadment of the District Magistrate, this court does not deem the District Magistrate to be a necessary or proper party to the present writ petition, in view of the several

decisions of this court and the Hon'ble Supreme Court, wherein the practice of impleading judicial and quasi-judicial authorities, whose orders are challenged, has been deprecated time and again.

Moreover, the District Magistrate has no personal cause of action in the present writ petition at all. Hence, the point of non-joinder raised by the private respondent is also turned down.

Accordingly, WPA No.12142 of 2021 is allowed, thereby setting aside the order dated May 5, 2021 passed by the District Magistrate, Murshidabad in respect of AST No.2 of 2019, as appearing at page-30 of the present writ petition. The private respondent and the petitioner, if they so feel, are at liberty to approach a competent civil court for adjudication of the dispute as to title *inter se*.

It is made clear that, in the event there is an adjudication or an order of civil court to that effect, the District Magistrate, on the basis of such order and/or decree, will be at liberty to further enquire within the domain of Rule 3 of the 2006 Rules, if such dispute is referred afresh by the distribution company after such adjudication.

The rights and contentions of the parties have not been gone into on merits.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)