

28.09.2021
Sl. No.5
srm

W.P.A. No. 14617 of 2021
Sudhangshu Sekhar De
Vs.
The State of West Bengal & Ors.

Mr. Robiul Islam,
Mr. Arghya Chakrabarti,
Ms. Pramita Banerjee
...for the Petitioner.

Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray
..for the Respondent Nos.10-12.

Mr. Anami Sikdar,
Mr. Avijit Boral,
Ms. Sahanaj Parveen
...for the Midnapore Municipality.

Mr. Arindam Chattopadhyay,
Mrs. Lipika Chatterjee
...for the State-Respondents.

Affidavits of service filed by the petitioner are taken on
record.

This writ petition has been filed by an owner of LR Plot
Nos.53(P) and 54(P) of Mouza Sekhpura under the Midnapore
Municipality. It is the contention of the petitioner that the
respondent Nos.10 to 12 have been constructing on a portion
of Plot No.54, of which the petitioner is the owner and that the
Midnapore municipality has illegally sanctioned the plan in
collusion with the said respondents without ascertaining the
area owned and occupied by the petitioner.

Reference is made to the RS record of rights to show that in the RS record the quantum of land recorded in the name of the petitioner was greater than the quantum recorded in the name of the petitioner in the LR record. It is further shown that the area recorded in the name of the respondent No.11 in the RS record was less than the quantum mentioned in the LR record. Accordingly, the petitioner claims that the sanction has been granted by the municipality for construction by the respondent Nos.10 to 12 on the portion of land of the petitioner which was wrongly omitted in the LR record.

It is next submitted by the petitioner that during excavation of the earth for the purpose of construction, pursuant to the municipality granting the sanction plan, the boundary wall and the building of the petitioner has sustained substantial damage.

It is also submitted that a title suit is pending before the learned Civil Court with regard to the declaration of right, title and ownership over the portion disputedly having been included in the share of the respondent Nos.10 to 12 in respect of which the sanction plan has been granted.

Mr. Mahato, learned Advocate appearing on behalf of the respondent Nos.10 to 12, submits that there is no construction on LR Plot No.53 and construction is on LR Plot No.54 and has been restricted to the area owned and occupied

by the said respondents. According to Mr. Mahato, no commercial building has been raised as alleged in the writ petition and the dispute with regard to the title and ownership over the portion on which the encroachment has been alleged by the petitioner, must be decided in the civil suit. It is also submitted by Mr. Mahato that the suit relates to declaration of title with regard to the Plot No.53 and in this writ petition disputes have been raised with regard the encroachment on Plot No.54. Thus, according to Mr. Mahato, the petitioner has taking contradictory stands.

Mr. Sikdar, learned Advocate appearing on behalf of the Midnapore Municipality, submits that the petitioner has made false and frivolous claims. That the sanction plan had been granted upon taking into consideration the relevant documents and necessary rules applicable. He further submits that the West Bengal Municipal Building Rules, 2007 having undergone a substantial change, the nature of the building sought to be erected by the respondent Nos.10 to 12 was permissible in law. That at the stage of excavation of the earth, the question of damage or destruction to the adjacent buildings and boundary walls did not arise. Moreover, a certificate has been produced by the architect, who was directed by the municipality, to cause an inspection and report about the damage alleged by the petitioner.. From the

certificate of the said architect, it appears that no damage has been caused to the boundary wall or adjacent buildings at the time of earth work. The dimension of the earth work has also been stated in the report. The copy of the report was handed over to the learned Advocate for the petitioner.

Mr. Sikdar has submitted the documents produced at the time of sanction of the plan which depicted the measures taken to ensure the structural stability and safety of the building as also the adjacent buildings. Thus, according to Mr. Sikdar, the writ petition is not maintainable against an authority which had taken preventive and precautionary measures before granting the sanction plan and has also ensured that the structural engineer of the respondent Nos.10 to 12 once again held an inspection and certified that there had not been any damage caused to the petitioner's premises and/or boundary wall.

Mr. Chatterjee, learned Advocate appearing on behalf of the State-respondents, submits that the allegations of erroneous recording of the quantum of land owned and possessed by the petitioner are not to be decided in the writ petition. As the petitioner has already approached the appropriate authority for correction of the record of rights, the said authority shall decide the issue.

Admittedly, the issue of error in the record of rights is to be decided by a different authority. This Court is not empowered to deal with the issue.

With regard to the encroachment on a portion of Plot No.54, a civil suit is pending. The petitioner will always be at liberty to make appropriate prayers before the learned Civil Court against any alleged construction and the same shall be decided in accordance with law by the learned Civil Court upon hearing the respective parties.

The Court is in agreement with Mr. Sikdar to the extent that the writ Court cannot ascertain the factual issues like damage and destruction to adjacent buildings. Neither the correctness of the sanction nor such disputed questions of facts with regard to structural stability can be looked into in this proceeding. Determination of question of title, encroachment etc. require trial on evidence.

However, on the short point as to whether the municipal authorities have acted contrary to law, I find that the municipality has submitted a detailed report certified by a qualified architect that no visible damage has yet been caused to the boundary wall and the adjacent buildings. The municipality has also stated before the Court that the rules on the basis of which the plan was granted have been followed.

I do not find any illegality or irregularity on the part of the municipality as yet. Moreover, the writ petition is premature as the structural stability and the alleged damage that may be caused to the adjacent houses and buildings can be ascertained only when the building comes up.

Thus, this writ petition is disposed of without any order as at present the Court does not find any illegality in the action of the municipality.

This order will not have any effect to the proceeding before the learned Civil Court and the petitioner shall be at liberty to take appropriate steps for protective and preventive orders including an order for local inspection and all these issues shall be decided by the Civil Court in accordance with law on the basis of the documents submitted by the parties and upon hearing the petitioner and the respondent Nos.10 to 12.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)