

MAT 845 of 2020
With
CAN 1 of 2020

Sanuyara Khatun & Ors

-Vs-

Siraj Haq & Ors.

Mr. Saikat Chatterjee
Mr. Abdur Rakib
Mr. Rudrakasha Chattopadhyay

... for the Appellants

Mr. Siraj Haq
Mr. Jaladhi Das

... for the Respondent No.1

Mr. Sibaji Kumar Das
Mr. A. D, Chakraborty
Ms. Debarshi Brama
Mr. Sagnik Mukherjee

... for the respondent no.6

Mr. Jahar Lal De
Mr. Shamim ul Bari

... for the State

The instant appeal is at the instance of the respondent nos. 7,8 and 9 to the writ petition being W.P. 16005 (W) of 2019 and is directed against an order dated 10.12.2020 passed by a Hon'ble Single Judge.

The respondent no. 1 herein filed the writ petition praying for demolition of illegal construction allegedly made by the appellants herein. The respondent no. 1 herein claims to be the owner of a water body being Dag No. 717 under Murarai-I Block under Police Station Murarai in the district of Birbhum. He alleges that the appellants herein have filled up some parts of the water body and are using

the same for residential purposes.

The Hon'ble Single Judge by the order impugned directed the Gram Panchayat to initiate a demolition proceedings and to conclude the same within a specified time limit. A direction was also passed to demolish upon a finding being arrived at regarding unauthorised construction.

Being aggrieved against such order, the respondent nos. 7, 8 and 9 preferred the instant appeal.

The appellants nos. 2 and 3 claim to have become the owners of a portion of Dag no. 717 by virtue of a deed of gift executed by their mother, i.e. the appellant no. 1 herein. The appellants further claim that the husband of the appellant no. 1 had transferred such portion of the property in favour of the appellant no. 1 by executing a deed in the year 1980. The appellants further claim that a house was constructed on Dag no. 717 and they are residing thereupon since the year 1980.

In course of hearing of the instant appeal it was submitted by the respondent no. 1 that the Prodhan of the concerned Gram Panchayat called for a survey. At the request of the Prodhan, the said work of survey was undertaken by the concerned Block Land & Land Reforms Officer (for short, the BL & LRO).

In terms of the previous order passed by this Court dated March 3, 2021 a report of the Block Land & Land Reforms Officer/the respondent no.5, Murari Block No.1, Dist.-Birbhum had been filed in Court.

Since the said report was produced for the first time on March 19, 2021, a direction was passed for circulation of such report amongst the appearing parties and the matter was directed to appear today, i.e. March 23, 2021.

Mr. Chatterjee, learned advocate for the appellant submits that a Civil Suit being Title Suit no. 90 of 2021 is pending before a competent Civil Court in respect of the property which is the subject matter of the writ petition out of which the instant appeal arises. He, further, contended that an order directing both the parties to maintain *status quo* in respect of the property in question has been passed by the Civil Court and such order is still subsisting. He also contended that the adjudication of the instant appeal should await the decision of the Civil Court in order to avoid conflict of judicial decisions.

Today, when the matter is taken up for hearing, Mr. Chatterjee, Learned Advocate for the appellants, produces a copy of the plaint in Title Suit No. 90 of 2021 and the injunction application filed in

connection thereto. The suit is pending before the Learned Civil Judge (Senior Division), 1st Court, Rampurhat, District-Birbhum. He also produces an information slip in support of his contention that an order of status quo has been passed in such suit.

It has been submitted by Mr. Chatterjee that the order of *status quo* has been passed in respect of the property in question and the *Prodhan* of the concerned Gram Panchayat is a party to such proceeding and, as such, the order of *status quo* is binding upon the *Prodhan* of the concerned Gram Panchayat also.

Mr. Das, Learned Advocate appearing for the *Prodhan*, submits that the Panchayat Authority has already taken a resolution to demolish the illegal construction. Mr. Das, however, submits that police assistance is necessary for the purpose of carrying out the work of demolition.

Mr. Das, through his Learned Advocate-on-record who is present in Court, files a copy of the resolution adopted by the concerned Gram Panchayat in Court today. Let the same be retained with the record.

However, Mr. Das, Learned Advocate for the *Prodhan* submit that no order of the Civil Court has been communicated to the *Prodhan* of the concerned

Gram Panchayat.

Mr. Dey, the learned advocate for the State, submits that the concerned BL & LRO conducted a survey upon prior notice to the parties and filed a report pursuant to the order passed by this Court. He drew the attention of the Court to the relevant portions of the said report and submits that the construction has been made by illegal filling up of a portion of the water body and also by encroachment of a portion of the village road.

Mr. Siraj Haq, the respondent no.1 herein appears in person. He submitted that it is now evident from the report of the BL & LRO that the appellants have made illegal construction on the water body and as such he prays that such illegal construction be demolished forthwith.

We have heard the Learned Advocates for the parties and perused the materials placed.

It appears from the report of the B.L.&L.R.O. that the L.R. Dag No. 717 admeasuring total 0.77 acres is classified as "*pukur*" (Pond). It was further indicated therein that as per the L.R. record of rights the names of 25 raiyats were recorded in their respective shares on the subject water body. It was further stated therein that the specific part of the water body has been unauthorisedly filled up pertaining to an area admeasuring 765 square ft. in

which there exists a pucca construction on a part and the rest are surrounded with concrete walls which is under possession of Sanuyara Khatun, Johra Khatun and Saleha Begum, i.e. the appellants before this Court.

It is not in dispute that the appellants are the heirs of Bedarul Islam whose name was recorded in the record of rights in respect of the said water body.

It is further stated in the said report that the unauthorised pucca construction also covers an encroachment of an area admeasuring 101 sq.ft upon the village metal road running through Plot No. 759. Thus the said report indicates that a part of the impugned construction was made in the water body and the rest by way of encroachment upon the village road. A sketch map is appended to such report indicating the encroachment upon the water body by way of illegal filling up of the same as well as the village road.

The report of the BL & LRO indicates that LR Dag no. 717 is a “pukur”, i.e. a pond/water body. Such fact is also corroborated from the documents annexed to the stay application filed in connection with the instant appeal. The deeds of the predecessors-in-title including the deed dated January 21, 2019 by virtue of which the appellant nos. 1 and 2 herein are claiming right, title and

interest in respect of a portion of Dag No. 717 shows that the same is a “pukur” i.e. a pond/ water body. The record of rights in respect of Dag no. 717 which is annexed to the stay application also indicates that the said Dag is a “pukur” i.e. pond/ water body.

Thus, the documents relied upon by the appellants herein also supports the case of the writ petitioner/ respondent no. 1 herein that the construction has been raised by the appellants herein by illegally filling up a portion of the water body. The appellants herein did not produce any document to show that the permission for conversion of the land in question for using the same for residential purpose was granted by the appropriate authority. Though the appellants claim that the construction was made in the year 1980, but such claim is contrary to the documents filed by the appellants. The deed of the year 2019 also indicates that the gifted property is a water body. Thus, this Court holds that the construction made by the appellants herein on a water body is an illegal and unauthorised one.

This Court further holds that the construction made by encroaching upon the village road is also an illegal and unauthorised one. As such there is no further requirement of the *Prodhan* to pass a

reasoned order as directed by the Hon'ble Single Judge.

Upon a cursory glance at the plaint of T.S. No. 90 of 2021, it appears that the same was filed at the instance and/or instigation of persons interested in protecting the construction made on a portion of Dag No.717. It appeared to this Court that it was a very cleverly designed plaint with the motive of resisting the statutory authorities from taking any action in terms of the statutory provisions.

This Court also could not comprehend why the *Prodhan* of the Gram Panchayat was impleaded as a party defendant in the suit for partition. The classification of the suit property being Dag no.717 as described in the Schedule of the plaint is mentioned as "Danga" i.e., solid land and "Pukur" i.e., pond/water body. In the application for injunction it was, *inter alia*, prayed that the nature and character of the suit property should not be allowed to be changed. From the information slip filed before this Court, it appears that the plaintiff and the defendant nos. 3 to 6 were directed to maintain *status quo* in respect of the nature and character and possession of the suit property. It does not appear from the said information slip that the status of the suit property was defined in the order of *status quo* and the learned Advocate for the

appellant also could not apprise this Court in that regard. The order of status quo is an adinterim order. However, the report filed by the BL & LRO as well as the documents annexed to the stay application clearly reveals that the portion of Dag No. 717 whereupon the construction has been made by the appellants herein is a water body.

The classification of the land stated in the schedule of the plaint forms part of the pleading and it is well-settled that a pleading cannot be a substitute for proof. Furthermore, when the documents relied upon by the appellants herein in this appeal clearly demonstrate the fact that Dag No.717 is a water body, the appellants herein cannot take advantage of the averments made in Title Suit No.90 of 2021 insofar as the classification of the suit property is concerned. The classification of the property described in the schedule to the plaint is contrary to the recording in the Record of Rights (ROR). ROR carries with it a presumption of correctness. The order of *status quo* passed in a Civil Suit instituted for the purpose of adjudication of the right, title and interest of the parties to such suit cannot in any way create any obstacle in the path of the Constitutional Court directing the statutory authorities to perform their duties.

It further appears from the plaint that the suit

was filed long after the filling of the writ petition and the instant appeal as well. The title suit is a suit for partition in between the co-sharers. The object of a suit for partition is to divide the undivided joint property of co-owners into separate shares of each of the co-owners. The said suit does not have any bearing on the issue of restoration of the water body, a portion of which has been found to have been illegally filled up. Thus the scope of the suit for partition and the scope of the instant writ petition out of which the instant appeal arose is entirely different and such suit has no bearing in the matter of adjudication of the instant appeal.

For the reasons as aforesaid, this Court is of the considered opinion that there is no fetter on the part of the *Prodhan* of the concerned Gram Panchayat to take steps in terms of the resolution adopted by the Gram Panchayat.

Since it is evident from the report of the B.L.&L.R.O., Murarai-I, District-Birbhum that a portion of the water body has been illegally filled up and a construction has been raised there on and also that an encroachment has been made upon the road, this Court directs the *Prodhan*, Dumur Gram Panchayat, Murarai Block-I/the respondent no.6 to demolish the unauthorised construction made on the water body as indicated in the report of the B.L.&

L.R.O. referred to hereinbefore and also by removing the encroachment upon the village road as indicated in such report by demolishing the construction raised thereupon. The concerned B.L.&L.R.O., Murarai-I, the Superintendent of Police, District-Birbhum and the Officer-in-charge of the Murarai P.S. are directed to render necessary assistance to the *Prodhan*/respondent no.6 in the matter of demolition of the unauthorised construction made on the portion of the water body and the village road as indicated in such report.

Needless to mention that the entire exercise shall be carried out as expeditiously as possible but positively within a period of four weeks from date as indicated by the *Prodhan* of the concerned Gram Panchayat through his Learned Advocate.

The Superintendent of Police, District-Birbhum and the Officer-in-charge of the Murarai P.S. be added as party respondents to this appeal for the purpose of carrying out the direction contained in this order.

Since Mr. De, Learned Counsel, is representing the State-respondents, no notice is required to be served upon them. However Mr. De is requested to communicate this order to the added respondents.

The appeal being **MAT 845 of 2020** along with the application being **CAN 1 of 2020** stand **disposed of** with the above directions.

However there shall be no order as to costs.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

All parties to act on a server copy of this order duly obtained from the official website of the Hon'ble High Court, Calcutta.

(Hiranmay Bhattacharyya,J.) (Subrata Talukdar,J.)