

S/L. 46.
28.09.2021
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Calcutta High Court
In The Circuit Bench At Jalpaiguri
Appellate Jurisdiction
(Via Video Conference)

WPA 622 of 2020

Smt. Sabitri Devi Gurung
-Vs.-
The State of West Bengal and others

Mr. Sandip Mandal,
Mr. Suraj Rajak
... for the petitioner

Mr. Jishnu Saha,
Mr. Nabankur Paul,
Mr. Rajdeep Bhattacharya
... for the respondent no. 6.

Mr. Subir Kumar Saha
Mr. Bikramaditya Ghosh,
... for the State.

In Re: CAN 2 of 2021

This is an application for substitution filed by the heirs and legal representatives of the deceased the original writ petitioner, namely, Smt. Sabitri Devi Gurung, for their substitution instead and in place of the original writ petitioner in the writ petition.

It is stated in the application that the original writ petitioner died leaving behind three daughters and one son. Particulars of the said heirs and legal representatives of the deceased writ petitioner are stated in the substitution application.

In that view of the matter, substitution of three daughters and one son in place and instead of the original writ petitioner is allowed.

Abatement of the writ petition, if any, shall stand set aside.

The application for substitution being CAN 2 of 2021 is, thus, allowed.

In Re: CAN 1 of 2021

CAN 1 of 2021 has been filed by the private respondent no. 6 seeking variation, modification and vacating of the interim order dated 03.02.2021. It appears from the records that the petitioner and the private respondent no. 6 are the owners of the adjacent properties.

Counsel for the State admits that the land is not exactly demarcated. Pursuant to inspections conducted at the instance of the private respondent no. 6 and in terms of the Section 34K of the provisions of the Disaster Management Act, 2005 it was found that there was a major threat to the residents of the private respondent no. 6 and adjoining areas. The threat is of landslide that would affect not only the private respondent no. 6 but also to be public at large, who use the road in pathway below the said wall.

The District Magistrate after causing enquiries has ordered that a construction of the landslide protection wall should be taken up immediately by the executive authority. The writ petitioner is aggrieved by the same.

The writ petition was moved challenging the said order dated 18.02.2020 passed by the District Magistrate, Darjeeling. It is submitted that the order has been illegally obtained by the private respondent no. 6 misleading the authorities. It is also submitted that a civil suit being T. S. No. 7 of 2021 is pending before the Civil Judge (Senior Division), Darjeeling in respect of the alleged encroachment by the private respondent no. 6 into the land of the writ petitioner. This is a long standing dispute.

The petitioner argues that the impugned order has been engineered by the private respondent no. 6 to alter status quo of possession in the said property and to enable her to illegally incroach into the petitioner's property.

Having heard the counsel for the parties, this Court is of the view that the District Magistrate has acted strictly in terms of the provisions of the Disaster Management Act, 2005. If the authorities specified under the aforesaid Act of 2005 have taken a conscious decision that there is need to construct a landslide protection wall at a particular place, it must be understood and accepted that the same is for the well being of the public at large.

There is no dispute in the fact that the entire area is prone to landslides especially during the rainy season. While it may be true as argued by the writ petitioner that there may not have been any landslides in the last 2 years, the possibility of one occurring and that too after expert opinion

is obtained by the District Magistrate cannot be ruled out.

In that view of the matter, this Court is of the view that the impugned order dated 18.02.2020 cannot be faulted and must be carried out as expeditiously as possible.

It is made absolutely clear that any construction made either on the land of the writ petitioner or the private respondent either at the cost of the private respondent or the State shall not create any equity or right in respect of the respective properties owned by the parties which is the subject matter of the aforesaid pending T. S. No. 7 of 2021.

It is also made clear that the extent and area of the land of the parties shall be decided exclusively in the pending civil suit being T. S. No. 7 of 2021 and the construction of the landslide protection wall shall not come in the way of any decision by the civil court.

With the aforesaid observations, CAN 1 of 2021 is allowed.

In view of the above, nothing further remains to be adjudicated in the writ petition and the same is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)