

16.12.2021  
SL No.12  
Court No.1  
(gc)

***Circuit Bench of Calcutta High Court  
At Jalpaiguri***

**MAT 73 of 2021  
With  
CAN 1 of 2021**

**Smt. Rachana Pradhan & Ors.  
Vs.  
State of West Bengal & Ors.**

**(Via Video Conference)**

Mr. Sandip Mandal,  
...for the Appellants.

Mr. Bikramaditya Ghosh,  
Mr. Pretom Das,  
...for the State.

Mr. Jishnu Saha,  
Mr. Nabankur Paul,  
Mr. Rajdeep Bhattacharya,  
...for the Respondent No.6.

By consent of the parties, the appeal and the application are taken up together and disposed of by this common order.

The appeal is arising out of an order passed by the learned Single Judge by which an earlier order dated 3<sup>rd</sup> February, 2021 was valid and the order of the learned District Magistrate dated 18<sup>th</sup> February, 2020 was upheld. Shorn of unnecessary details, the predecessor-in-interest of the present appellants and the respondent No.6 are the adjacent co-owners. A civil suit is pending between the parties regarding alleged encroachment and illegal construction being

carried out by the respondent No.6. During the pendency of the civil suit, the matter was taken up by the Sub-Divisional Officer, Sadar Darjeeling and thereafter by the learned District Magistrate, Darjeeling. The Amin, BL&LRO, Sadar-DJ made the following observations:-

*“Ultimately, after hearing both the parties, Sub-Divisional Officer gave order to RI to do the demarcation of land on 27<sup>th</sup> January, 2020 in presence of both the parties by placing poles temporarily and prepare the report and place in the next hearing. So, the next hearing was decided to be held on 29<sup>th</sup> February, 2020 at 12 pm at same venue which was later preponed to 28<sup>th</sup> February, 2020 at 3.30 pm.*

*As per the order of S.D.O. Sadar, Darjeeling, a field enquiry was conducted on 27/01/2020 at 11.30 a.m. after issuing notices to concerned parties vide memo no.30/BLLRO-DJ/2020, dated 20/01/2020.*

*During enquiry both parties were present on the spot and filed their haziras (copy enclosed). In presence of both parties the undersigned has taken measurement of land as per the site plan submitted.*

*After demarcation, it is found that the petitioner Smt. Shalla Sultan Plant is enjoying possession over 30 poles of land which she purchased from Smt. Sabitri Devi Gurung, W/o Bhuwan Singh Gurung vide Sale Deed No. I-251/80, dated 7<sup>th</sup> May 1980. After proper demarcation all boundary points are shown to both parties.*

*Further, during enquiry it is also seen that landslide has occurred just below the house of Smt. Shalla Sultan Plant and the land belonging to Smt. Sabitri Devi Gurung.”*

Thereafter, the learned District Magistrate passed an order on 18<sup>th</sup> February, 2020 on the basis of the petition filed by Smt. Shalla Sultan Plant, the respondent No.6, alleging that an expanding landslide has occurred in the month of July, 2019 which is a major threat to the residence of the area as well as the public using path below. The learned District Magistrate after giving opportunities of hearing to the parties passed the following order:-

*“Hence the final order is made u/s Sec 34(k) of Disaster Management Act 2005 as follows:*

- 1. No further time shall be given to both the parties of Mrs. Shalla S. Plant and Mrs. Sabitri Devi Gurung (represented through Shri Raju and Prajwal Gurung) for resolving their internal differences.*
- 2. Construction of a Landslide protection wall by the concerned executing authority be taken up immediately.*
- 3. I.C, Sadar is directed to maintain law and order during the entire process of construction of the Protection wall.”*

An issue has been raised in the writ petition that the learned District Magistrate did not consider the fact that the landslide was caused due to illegal

construction of the respondent No.6 and consequent encroachment upon the land of the appellants where such illegal construction was done. This, according to the learned Counsel for the appellants, has caused erosion to the soil and had resulted in a landslide in the past.

It is not in dispute that a title suit is pending between the parties where the Advocate Commissioner has already filed a report on the prayer of the appellants. It would not be proper for us at this stage to indicate our mind with regard to the report filed by the Amin, BL&LRO, Sadar-DJ with regard to the demarcation of the property or the report that the Advocate Commissioner has filed before the Trial Court. However, one fact cannot be overlooked, that is, the possibility of a portion of the land being lost due to construction of the retention wall touching the property of the appellants. The appellants shall be at liberty to pray for appropriate reliefs in the pending suit along with any compensation for alleged illegal construction either over the suit land or in the land of the respondent No.6 that might have contributed to the landslide. The appellants shall be at liberty to pray for appointment of an independent Engineer Commissioner for deciding the aforesaid issue in the event any amendment is made to the original plaint.

Considering the fact that the area is prone to landslide, we do not wish to interfere with the order passed by the learned District Magistrate with regard to the construction of the retention wall. This order shall not be construed as final expression of opinion on any of the issues considered in this order and are likely to come up at the hearing of the suit.

The parties shall not cause any hindrance to the construction of the retention wall.

With the aforesaid observation, the appeal being MAT 73 of 2021 and the application being CAN 1 of 2021 stand disposed of.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

**(Biswajit Basu, J.)**

**(Soumen Sen, J.)**