

31.01.2022
Item No. 17
Court No.6.
S. De

Through Video Conference

**M.A.T. 13 of 2022
I.A. No. CAN 1 of 2022**

**Nakul Chandra Jana.
Vs
State of West Bengal & Ors.**

Mr. Bharat Chandra Simai,
...for the appellant.

Mr. Saptarshi Kr. Mal,
...for the private respondents.

By consent of the parties the appeal and the connected application are taken up together for hearing.

This appeal is directed against a judgment and order dated December 14, 2021 whereby WPA No.2265 of 2020 was dismissed by the learned Single Judge with liberty to the petitioner to approach the competent Civil Court canvassing the civil rights of the parties as averred in the writ petition and/or the competent authority in the event the petitioner alleges that the construction raised by the private respondents are unauthorized and without permission.

The writ petitioner/appellant approached the learned Single Judge with the grievance that the private respondents have encroached upon public

property and have made construction thereon which has led to blocking the ingress to and egress from the writ petitioner's property. The learned Judge was of the view that the dispute between the writ petitioner and the private respondents being of a private and civil in nature, the writ petition is not maintainable.

However, we find that one of the allegations of the writ petitioner is that the private respondents have encroached upon and made unauthorized construction on Government land. The writ petitioner appears to have made a representation dated January 3, 2020 to the Sub-Divisional Officer, Tamluk, Purba Medinipur, who, the writ petitioner says, is the competent authority to consider the petitioner's grievance under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The writ petitioner/appellant says that no action has been taken by the Sub-Divisional Officer on the basis of such representation and the representation has not been considered at all.

We are in agreement with the learned Single Judge that the civil dispute between the writ petitioner and the private respondents could not have been made subject matter of the writ petition. However, we are of the view that to the extent the writ petitioner's grievance is that the private respondents have encroached upon public property, the writ petitioner may ventilate such grievance before the appropriate

authority under the 1971 Act who should consider such grievance and take a decision thereon.

Accordingly, we dispose of this appeal and the connected application by directing the Sub-Divisional Officer, Tamluk, Purba Medinipur, to consider the writ petitioner/appellant's representation dated January 3, 2020 (annexure P-11 to the Stay Application) and take a reasoned decision thereon in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order, after giving an opportunity of hearing to the writ petitioner/appellant, the private respondents and any other party who may be affected by the decision taken on the writ petitioner/appellant's representation. Needless to say that if the officer who is respondent no.3 herein, finds that there is substance in the complaint of the writ petitioner/appellant, appropriate remedial measures will be taken by him immediately.

The order under appeal is modified to the above extent.

Since we have not called for affidavits, the allegations contained in the stay petition are deemed not to be admitted by the respondents.

Accordingly, the appeal being MAT 13 of 2022 is disposed of along with the connected application being I.A. CAN 1 of 2022.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)