

**MAT 185 of 2022
With
CAN 1 of 2022
With
CAN 2 of 2022
With
CAN 3 of 2022**

**Partha Ghosh & Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Soumen Kumar Dutta
Mr. Sabyasachi Bhattacharjee
Ms. Arpita Kundu

... ... for the appellants

Mr. Ashim Kumar Ganguly
Mr. Bellal Shaikh

... ... for the State

Mr. Partha Pratim Roy
Mr. Sarbananda Sanyal

... ... for the respondent nos. 4 & 5

This appeal is directed against the order of the learned Single Judge dated 14th December, 2021 whereby WPA 7133 of 2021 has been dismissed.

One Mohanlal Ghosh had filed the writ petition and it has been pointed out that pending the said writ petition he had died on 27.05.2021 and the present appellants being his legal heirs had filed the application for substitution before the learned Single Judge but without deciding the same, the writ petition has been dismissed.

Learned counsel for the State has submitted that subsequently the application was decided and record was corrected.

We do not find it necessary to go into the said disputed issue as CAN 1 of 2022 has been filed by the

applicants seeking leave to appeal with the plea that they are the legal heirs of the deceased writ petitioner, we deem it proper to grant leave. Accordingly, CAN 1 of 2022 is allowed.

There is delay of 12 days in filing the appeal. Hence, CAN 2 of 2022 has been filed seeking condonation of delay in filing this appeal.

Having regard to the explanation which is furnished, we are satisfied that the delay has properly been explained. Accordingly, CAN 2 of 2022 is allowed and the delay in filing the appeal is condoned.

Heard learned counsel for the parties.

Submission of learned counsel for the appellants is that the land belongs to the appellants and plan was sanctioned duly after considering the title by the competent authority, therefore the private respondents have no right to object to the construction raised by the appellants.

Learned counsel for the private respondents has submitted that the land belongs to the public trust and without permission of the District Judge it could not have been sold and therefore the appellants cannot be permitted to raise the construction thereon.

Learned counsel for the State has produced the report sent by the S.I of the concerned police station and has submitted that on account of the dispute between the parties, construction cannot be allowed.

Having heard the learned counsel for the parties and on perusal of the record it is noticed that the original writ petitioner had approached the Writ Court with the plea that he was the owner of 0.0833 acres of land out of which he had acquired .133 decimal by inheritance and .7 decimal by purchase. Since there was obstruction in raising the construction, therefore the prayer was made in the petition to restrain the private respondents from disturbing the construction.

Learned Single Judge has duly examined the rival stand of the parties and has reached to the conclusion that the Court cannot go into the disputed question of ownership or the original writ petitioner's right to construct any wall.

In the circumstances of the case and in order to keep peace in the locality and also taking note of the order which was already existing under Section 144 (2) of the Cr.P.C., learned Single Judge has directed the Officer-in-charge to ensure that no breach of peace in the area takes place and further to maintain regular vigil in the area.

The report in the form of communication sent by the S.I. of police of the concerned police station is placed on record today which discloses that there is a dispute regarding use of land in question between the appellants and Gopalnagar villagers and as per the stand of the locals the land belongs to the people of the area from the

beginning as “”Debottar Property” specifically for the use of temple. The report reflects that the dispute is civil in nature existing between the parties. Hence, proper remedy available to the appellants is to approach the Civil Court and establish their right by leading appropriate evidence in support of their claim.

Thus, we find no reason to interfere in the order of the learned Single Judge. The appeal is accordingly dismissed. All other connected applications are disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)