

S/L 24
11.5.2022
Court. No. 19
sn

WPA 4353 of 2022

Prasanta Mondal
Vs.
The State of West Bengal & Ors.

Mr. Sounak Bhattacharya
Mr. Sounak Mondal ... for the Petitioner

Mr. Wasim Ahmed
Mr. Sk. Md. Masdood ... for the State.

Mr. Mir Anuruzzaman ..for the municipality

Despite service, none appears on behalf of the respondent nos. 5 to 8. Affidavit-of-service is taken on record.

The allegation is against the respondent no.5.

It is submitted that the respondent no.5 has constructed illegally on L.R.Dag No.1091, Mouza Ghasiara, Police Station Sonarpur, District 24-Parganas(South). It is further contended that the petitioner has come to know subsequently that the Rajpur-Sonarpur municipality has also sanctioned a plan after granting mutation in respect of the said land in the name of the respondent no.5.

The allegations are that the plot in question is an undivided property. A partition suit is pending. A suit for declaration and injunction is also pending.

The learned advocate for the petitioner submits that the alleged plan, if sanctioned, has been done on the basis of fraud and mis-representation practiced by

the respondent no.5. It is further alleged that the municipal authorities have mutated the name of the petitioner in the records without considering the inspection books in which the names of the predecessors of the respondent no.5 had been recorded.

Mr. Anuruzzaman, learned advocate for the municipality submits that the mutation has been granted on the basis of deed of conveyance produced by the respondent no.5. That mutation does not confer any title and as such the same shall abide by any final decision in the civil suit. He further submits that if any plan has been sanctioned, the same had been done on the basis of the records. Unless the partition suit is adjudicated and the shares of the parties are declared, inter alia, holding that the alleged plot is an undivided property and should be partitioned by metes and bounds, the allegation of fraud and material mis-representation would not be substantiated. The respondent no.5 claims absolute title and has filed a civil suit.

Under such circumstances, this writ petition is disposed of without going into the merits of the claims and counterclaims of the parties. Admittedly, mutation does not create any title.

When the Court is in seisin of the issues with regard to the right, title and interest of the respondent

no.5, vis-a-vis the petitioner and also of the contrary claim of the petitioner as an undivided share holder of the property in question, all actions of the municipality including grant of mutation and sanction, if any, shall abide by the final decision in the suit. However, the municipality will ensure that no construction takes place in violation of law.

Disposal of the writ petition, shall not prejudice the suits filed by the parties.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of server copy of this order and/or the learned advocate's communication.

(Shampa Sarkar, J.)