

07.04.2022
Item No.57
Court No.6.
AB

M.A.T. 422 of 2022
With
I A CAN 1 of 2022

Raktim Roy & Anr.
Vs
The State of West Bengal & Others

Mr. Biswaroop Bhattacharya,
Mr. Aranya Saha ...for the Appellants.

Mr. Ziaul Islam,
Mr. V. Tripathi ...for the State.

Mr. Pritam Choudhury,
Mr. Abhisek Addhya ...for the Respondent No.8/
Writ Petitioner.

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

Affidavit of Service filed in Court today be kept on record.

This case is another unfortunate example of acrimonious relationship between two neighbours. The present appellants were the respondent nos.8 and 9 in the writ petition, which was filed by Samar Dey, being the respondent no.8 in this appeal.

The relevant facts of the case appear to be that the present appellants being Raktim and Supratim had filed a complaint with the Naihati Municipality to the effect that the present writ petitioner/respondent no.8 being Samar is making unauthorized construction on his land, which is adjacent to the property of Raktim and Supratim. Alleging inaction on

the part of the Municipality, Raktim and Supratim approached this Court by way of filing a writ petition, which was disposed of by a learned Single Judge by directing the Municipal Authorities to look into the complaint filed by Raktim and Supratim and take appropriate steps after giving an opportunity of hearing to all concerned parties.

The present appellants say that upon receiving notice of hearing from the Municipality, Samar (present writ petitioner) filed a complaint against Raktim and Supratim before the Municipality, by way of a counter-blast, alleging that the building where Raktim and Supratim reside, was constructed without obtaining permission or sanctioned plan from the Municipality. In the complaint, Samar called upon the Municipality to look into the title deed in respect of the property of Raktim and Supratim and also verify whether there was proper mutation in their favour.

Alleging inaction on the part of the Municipality, Samar has filed the present writ petition being WPA 21244 of 2021, which was disposed of by the learned Single Judge by the order impugned before us. The operative portion of the impugned order reads as follows:

“Having heard the learned Advocates for the respective parties, this Court is of the opinion that for the ends of justice, the hearing which has commenced pursuant to the order dated August 16, 2021, should be kept in abeyance. The inspection report and other

records filed in connection with such proceedings shall be retained with the records. On the basis of the complaint raised by the petitioner, a further inspection of the construction of the respondent nos.8 and 9 on Holding No.63/3, Balivasa Road shall be made. Such inspection shall be held in the presence of the parties. A report shall be prepared along with the sketch map, if any, deviation and/or irregularity is detected. The reports shall be supplied to the parties. The parties shall be allowed an opportunity to deal with the said report and thereafter both the proceedings, initiated by the parties herein against each other with regard to their respective constructions, shall be disposed of simultaneously upon granting adequate opportunity to the parties to file their written versions and to adduce oral and documentary evidence, in support of their contentions. Both the demolition cases shall be heard analogously and the proceedings shall be separately recorded.

Reasoned orders shall be passed in respect of both the complaints and communicated to all concerned.

The entire exercise shall be completed within a period of four months from the date of communication of this order.”

Being aggrieved, Raktim and Supratim, who were the respondent nos.8 and 9 in the writ petition, are in appeal before us.

Appearing for the appellants, Mr. Biswaroop Bhattacharya, learned Counsel argued that the complaint made by Samar against the appellants is utterly frivolous and merit-less. The complaint has been lodged by way of a counter-blast only to harass the appellants. The Municipality has no power to go into the question of title. The exercise initiated by the

Municipality on the basis of this Court's order passed on the writ application of Raktim and Supratim, should not have been kept in abeyance and such procedure should not have been tagged with the procedure to be initiated on the basis of the frivolous complaint made by Samar.

Mr. Pritam Choudhury, learned Advocate appearing for the writ petitioner/respondent no.8 submits that the complaint of his client was not lodged by way of a counter-blast. The complaint was filed in March, 2021, much before this Court passed the order dated August 16, 2021, on the writ petition of Raktim and Supratim.

We agree with Mr. Bhattacharya that the Municipality has no power to go into the question of title. We clarify that the exercise to be conducted by the Municipality on the basis of the complaints lodged by Raktim and Supratim on the one hand and Samar on the other shall in no way touch any question of title to property. The proceedings before the Municipality will be restricted to ascertaining whether either of the parties has made any unauthorized construction. Otherwise, we do not find any reason to interfere with the order under appeal. For the sake of convenience, the learned Judge has directed the two proceedings, on the basis of complaints of the two parties, to be dealt with analogously. This would save time, money and energy of all concerned. The Municipality should

complete the exercise on the basis of complaints made by either parties within ten weeks from the date of communication of this order, after granting full opportunity of hearing to all the concerned parties and permitting them to place relevant documents before the Municipality.

We make it clear that we have not gone into the merits of the claims and counter claims made by the parties hereto against each other. The Municipality shall take an informed decision in accordance with law. In the event, the Municipality finds that either of the parties has made unauthorized construction, the Municipality shall take appropriate steps in accordance with law.

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

MAT No.422 of 2022 stands disposed of along with IA CAN 1 of 2022.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)