

21.01.2022
Item No.6.
Court No.6.
AB

Through Video Conference

**M.A.T. 351 of 2019
With
I A CAN 1 of 2019
(Old CAN 2924 of 2019)**

Sri Prasanta Koley & Others

Vs

The State of West Bengal & Others

Mr. Gautam Acharya,
Mr. Chittapriyo Ghoshfor the Appellants.

Ms. Chama Mookherjifor the State.

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

The writ petitioners/appellants had approached the learned Single Judge with the grievance that the private respondents were encroaching on State land and making illegal construction thereon.

The learned Judge noticed that the writ petitioners had filed a suit being Title Suit No.85 of 2017 in the Court of the learned Civil Judge (Junior Division), Amta at Howrah, alleging encroachment. An Officer of the State was made proforma defendant in the suit. The learned Judge opined that since encroachment is an issue in the aforesaid title suit, he ought not to interfere under Article 226 of the

Constitution of India. Accordingly, the learned Judge dismissed the writ petition. Being aggrieved, the writ petitioners are before us.

Learned Counsel appearing for the appellants submitted that the issue in the aforesaid title suit is encroachment by the private respondents on the land of the writ petitioners. There is no allegation against the State. No relief has been claimed against the State. Since the concerned land is in between the land of the writ petitioners and State land, by way of abundant caution, an Officer of the State has been made proforma defendant in the suit.

We have seen the plaint filed in the aforesaid title suit. Learned Advocate for the appellants appears to be correct. The State has no role to play in the suit. The allegation in that suit is not that the private respondents are encroaching on State land but that the private respondents are encroaching on the land of the writ petitioners. That is an issue separate from the issue of encroachment on State land.

Accordingly, we direct the respondent no.4, the Executive Engineer, Howrah Highway Division, Public Works (Roads) Directorate, Government of West Bengal to issue notices to the writ petitioners/appellants as well as the private respondents and look into the grievance of the writ petitioners as ventilated in the writ petition. After due investigation and giving an

opportunity of hearing to all concerned, if the respondent no.4 finds that there is merit in the case of the writ petitioners, appropriate remedial action will be taken by the respondent no.4. Needless to say that it is the duty of the State to protect State land and nobody can be allowed to illegally encroach thereon and/or make illegal construction thereon. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order along with a copy of the writ petition by the respondent no.4 from the writ petitioners.

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

The appeal being MAT No.351 of 2019 along with CAN 2924 of 2019 are, accordingly, disposed of.

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

(Kausik Chanda, J.)

(Arijit Banerjee, J.)