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C.O. 1021 of 2022

**Minati Roy & Ors.
Vs
Asim Ghosh @ Khokon Ghosh & Ors.**

Mr. Probal Kumar Mukherjee, Sr. Adv.
Ms. Shebatee Datta

... For the petitioners.

Mr. Sourav Sen, Adv. ... for the opposite parties.

The subject matter of challenge in this case is against an order dated April 12, 2022 passed by the Civil Judge (Junior Division), Bongaon in Title Suit No. 31 of 2004 setting the suit for peremptory hearing.

Mr. Probal Kumar Mukherjee, learned senior advocate appearing for the petitioners, while assailing the impugned order, submits that the suit may not be allowed to be set for peremptory hearing keeping any interlocutory applications pending.

The attention of the court is drawn by Mr. Mukherjee to order passed in CO. No. 3859 of 2006, whereby CO. No. 3859 of 2006 was disposed of with an observation that defendants/opposite parties must remove any obstruction in plot no. 103 and 105.

In obedience to such direction passed by this court, the court below earlier endeavoured to ensure compliance of the order passing necessary direction upon the opposite parties.

As desired extent of compliance could not be done by the opposite parties, despite direction passed by the court below as well as by this court, a separate application was filed by the petitioners seeking compliance of the direction passed by this court in CO. No. 3859 of 2006.

Admittedly there has been local inspection held to ascertain the extent of obstruction allegedly raised with respect to plot nos. 103 and 105. Local Inspection Commissioner has thereafter submitted his report.

It is strenuously contended by Mr. Mukherjee that the report of the inspection commissioner could not be appropriately appreciated by the court below, and the court below under an erroneous approach has set the matter for peremptory hearing, keeping the interlocutory application pending, filed by the petitioner/plaintiff, seeking compliance of the direction passed by this Court in CO. No. 3859 of 2006.

Per contra, Mr. Sourav Sen, learned advocate appearing for the opposite party Nos. 1 to 4 disputes with the submission raised by Mr. Mukherjee, replying to the effect that the court below has already disposed of the interlocutory application, and thus supporting the order of the court below, replies that there is nothing left pending for decision, to be returned by the court below in connection with any interlocutory application.

Having considered the submission of both sides, it

appears that there has been a direction passed in CO. No. 3859 of 2006 by this court, requiring opposite parties to remove any obstruction in plot nos. 103 and 105. There has been a further direction passed by the court below, requiring the opposite parties to ensure compliance.

In spite of being noticed, besides opposite parties nos. 1 and 4, nobody appears for the rest of the opposite parties, and affidavit of service has already been filed. Thus despite opportunity being extended, the same goes unavailed of by rest of the opposite parties.

It would be profitable here to mention the report of the local inspection report submitted before the court below encompassing four components pending therein, which may be set out hereinbelow.

“1. No there is no road visible in the same width extend on the plot no. 41 to Plot no. 102. But it shows a new road made of cement, which extends to plot number 105. The total width of the road is 13 ft. but the cement road is 8 ft. out of 13 ft, that is over the plot no.41.

2. Yet, there is an obstruction. There is a newly constructed cement road which extends to the gate of plot no. 105 and there is a Pucca house on the plot no. 105, Plot no. – 102 is located on the South side of plot no. – 105. A vacant space of plot no. – 44 is

adjacent west side of the plot no.- 105.

3. There is a Pucca house over the plot no.- 105 and the plot no. – 105 is surrounded by a wall. A new cement road over the Plot no. – 41 which extends to plot no. – 105.

4. No, there is no demolition visible on the road.”

The compliance thus sought to be ensured by the opposite parties is very much apparent on the face of the report of the learned inspection commissioner.

There is no apparent ambiguity in the report of the local inspection commissioner.

That being the position the report of the commissioner needs to be revisited to ensure compliance of the direction passed in C.O. No. 3859 of 2006, giving a look afresh in presence of the opposite parties.

Peremptory hearing of the suit may be kept in abeyance till the end of January, 2023.

The report of local inspection commissioner submitted earlier, may be revisited giving a hearing afresh to both the parties, in context with the interlocutory application filed by the petitioners/plaintiffs, seeking compliance of the direction, within such time.

After the decision, as above is returned, the court below may feel free to proceed with the suit, after adhering to the formalities of law, if there be still left.

This would not, however, prevent the opposite parties to raise their voice in accordance with law, while making consideration of the local inspection commissioner's report afresh.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)