

04. 06.06.2022
Ct. No.6
Tanmoy

F.M.A. 643 of 2022
(M.A.T. 681 of 2022)

Smt. Chhanda Paul
-Versus-
The State of West Bengal & Ors.

With
IA No: C.A.N. 1 of 2022

Mr. A.K. Routh, Adv.,
Ms. Ananya Mondal, Adv.

...for the appellant.

Mr. Himadri Sekhar Chakraborty, Adv.,
Ms. Susnita Saha, Adv.

...for the State.

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

A Judgment and order dated March 21, 2022, whereby W.P.A. 2099 of 2022 was disposed of, is the subject-matter of this appeal.

The writ petitioner/appellant approached the learned Single Judge with the grievance that the private respondent had obtained a Building Plan from the Bidhannagar Municipal Corporation (in short, 'BMC') by making material misrepresentation and fraudulent statements in the application. On the basis of such sanctioned plan, the private respondent is making construction on land which actually belongs to the writ

petitioner. The writ petitioner had made a representation to BMC for looking into the matter and cancelling the plan that was sanctioned in favour of the private respondent. Alleging inaction on the part of BMC, the writ petitioner approached the learned Single Judge.

The learned Single Judge noticed that the writ petitioner has filed a civil suit before the learned Civil Judge (Junior Division), 1st Court, Barasat, North 24-Parganas, for declaration of title and injunction against the private respondent. In that suit, the writ petitioner has obtained an *interim* order of injunction restraining the private respondent herein from transferring, alienating etc., the suit land. The learned Judge observed that since the writ petitioner is claiming that the private respondent has encroached on her land and since such issue is pending before the Civil Court, until such issue is decided, BMC ought not to be directed to go into the question of whether or not the private respondent has obtained the sanctioned plan by making material misrepresentation or by practicing fraud. Accordingly, the learned Single Judge disposed of the writ petition by observing as follows:

“If the petitioner contends violation of the order of the civil court, the petitioner is at liberty to approach the civil court, in accordance with law. The petitioner may also file appropriate application for implementation of the order of injunction. This order shall not affect the merits of the civil suit. Neither will this order be treated as a seal of the court on the construction that is being raised by the respondent no.9. All the points raised in this writ petition may be renewed at the appropriate stage.”

Being aggrieved, the writ petitioner is before us. From the affidavit of service filed in Court, we find that the private respondent as well as BMC have been served. However, nobody appears for BMC or the private respondent. In view of the nature of the order that we propose to pass, we do not think that it is necessary to keep the matter pending any further.

The Commissioner of BMC is directed to consider the writ petitioner's representations annexed to the writ petition, in exercise of his power under Section 286 of the West Bengal Municipal Corporation Act, 2006 and take a reasoned decision on such representations, in accordance with law, within a period of eight (8) weeks from the date of receipt of a copy of this order, after giving an opportunity of hearing to the writ petitioner, the private respondent and any other concerned party. It is made clear that the Commissioner shall not go into the question of title in respect of the concerned land. The exercise of the Commissioner shall be restricted to ascertaining as to whether or not the private respondent obtained the sanctioned plan by making material misrepresentation or fraudulent statements in the application for sanction of the Building Plan. The decision so taken by the Commissioner, shall be communicated to the concerned parties within a week from the date of the decision.

We have not gone into the merits of the writ petitioner's claim. It is for the Commissioner of BMC to

take an informed decision regarding the same, in accordance with law. If the Commissioner finds that the writ petitioner's grievance is correct and the sanctioned plan should be cancelled, the consequences will follow.

We further clarify that nothing contained in this order shall have any bearing on the civil suit that is pending between the parties.

With the aforesaid modification of the order impugned, the appeal being F.M.A. 643 of 2022 and the connected application being IA No: C.A.N. 1 of 2022 are disposed of.

Let urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with all necessary formalities.

(Subhendu Samanta, J.)

(Arijit Banerjee, J.)