

01.07.2022
Item No.7
Ct. No.7
CHC
(disposed of)

C.O.1462 of 2022

**Sri Jagadish Bose & anr.
Vs.
Sri Subhra Bhattacharjee**

Mr. Sanjay Mukherjee
...for the petitioners

The subject-matter of challenge in this revisional application is against the order dated 12th April, 2022 appointing Engineer Commissioner under Order 26 Rule 9 C.P.C. on the prayer of the opposite party/appellant.

Mr. Mukherjee, learned advocate appearing for the petitioners upon adverting to order dated 1st October, 2021, passed in Title Appeal No.17 of 2020 of learned Additional District Judge, 3rd Court, Alipore submits that pursuant to the order of this Court in C.O. No.810 of 2021, directing the court below to readjudicate the issue pertaining to occupational charges, and dispose of the same afresh on its own merits, previously there has been an order for Engineering Commission. While making such above direction in C.O.810 of 2021 a further direction was there regarding payment of occupational charges at the rate of Rs.6,000/- (Six Thousand) on ad hoc basis.

Learned advocate for the petitioners contends that the court below allowed the Engineer Commission for

the second time, on the prayer of the opposite party/appellant, being oblivious of its order dated 1st October, 2021, appointing Engineer Commissioner on the prayer of the petitioners/respondents, to ascertain the correct market value of the suit property, pertaining to assessment of occupational charges involved in this case.

According to the petitioners the Engineer Commission allowed by order dated 1st October, 2021 has already submitted his report upon conclusion of the commission work, and the opposite party also participated in the commission work.

The contention thus raised by the petitioners is that in the event of second Engineering Commission being held, there will be a contradictory stand as regards the occupational charges, and as such, the main issue as directed to be addressed by the order of this Court passed in C.O.810 of 2021 may not be effectively adjudicated.

It is, thus, contended further that second commission is not at all needed for deciding the issue pertaining to occupational charges.

Upon considering the submission of learned advocate for the petitioners, it appears that petitioners are aggrieved with the second Engineering Commission being allowed to be held even after the first Engineer Commissioner has already submitted his report.

Admittedly, reliance upon the Engineering Commission has been made purely for the decision of an issue for occupational charges pending decision of Title Appeal No.17 of 2020 as mentioned hereinabove. When first Engineering Commission has already been completed leading to submission of report, the second commission though allowed, the report of which, may not be accepted by the court below without providing an opportunity to raise objection against the second Engineer Commissioner's report.

It is, thus, clarified that the report of the second engineering commission may not be accepted automatically by the court below, without allowing the petitioners to raise objection against the report. If any objection is raised by the petitioners against the second Engineer Commissioner's report, the same shall be resolved in accordance with the provisions of the law, bearing in mind the first Engineer Commissioner's report already submitted in this case, on the prayer of the petitioners/respondents in Title Appeal No.17 of 2020.

In view of the above, no notice is required to be served upon the opposite party. Service as such, stands dispensed with.

The revisional application is accordingly disposed of with the direction and/or observation made hereinabove.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)