

06. 29.08.2022
Ct. No.6
Tanmoy

F.M.A. 835 of 2021
(M.A.T. 672 of 2021)

Sri Sumit Dey
-Versus-
The Bidhannagar Municipal Corporation & Ors.

With
IA No: C.A.N. 1 of 2021

Mr. Soumik Pramanick, Adv.,

...for the appellant.

Mr. S. Bandopadhyay, Adv.,
Mr. Arka Kr. Nag, Adv.,
Mr. Tirthankar Dey, Adv.

...for the Bidhannagar
Municipal Corporation.

Mr. Syed Nurul Arefin, Adv.,
Mr. Rahul Singh, Adv.

...for the respondent no. 6.

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

A judgment and order dated April 12, 2021, whereby the appellant's writ petition being W.P.A. 15938 of 2019 was dismissed, is under challenge in the present appeal.

It appears that the appellant's father owned a property being plot no. 83, Block-DL, Sector-II, Salt Lake City, Kolkata – 700091.

The appellant contended before the learned Single Judge that his father died intestate. His mother manufactured a Will and obtained probate thereof. On the strength of such probate, she sold the said property to the private respondent herein. The private respondent has constructed a residential building on the said plot of land. The appellant has applied for revocation of the probate that his mother obtained in respect of the alleged forged Will of his father. The appellant has also obtained an order of injunction against the private respondent in a suit for declaration and injunction. The prayer of the appellant before the learned Single Judge was for a direction on the Authorities to demolish the building that has been constructed by the private respondent on the concerned plot of land.

The learned Single Judge dismissed the writ petition, making the following observations:-

“It appears from the submissions of the parties that the private respondent purchased the property in question upon payment of consideration and the Bidhannagar Municipal Corporation has sanctioned a building plan and thereafter issued a completion certificate after the construction was over.

The petitioner claims ownership of the land in question. The Suit filed by the petitioner praying for revocation of the grant of probate is pending consideration before the learned Court.

In the event, the petitioner is successful in the said suit then he may take necessary consequential steps pursuant to the order passed by the Court. No relief can be granted to the petitioner at this stage.”

Being aggrieved, the writ petitioner is before us by way of this appeal.

We have heard learned Counsel for the parties. The writ Court will not go into title disputes or whether the appellant's mother forged a Will and obtained probate thereof. In the event the appellant succeeds in the proceedings pending before the civil fora, he may take necessary consequential steps.

We have been told that the private respondent herein has also filed a suit claiming declaration and injunction against the appellant herein, which is pending.

The Bidhannagar Municipal Corporation tells us that the building in question has been constructed by the private respondent in accordance with the plan sanctioned by the Corporation. Completion certificate has also been issued in favour of the private respondent.

Under those circumstances, no relief can be granted to the appellant in the present proceedings. The grievance of the writ petitioner/appellant is of a nature which must necessarily be ventilated before a civil forum and not before the writ Court. The learned Single Judge has rightly rejected the writ application.

The appeal being F.M.A. 835 of 2021 and the connected application being IA No: C.A.N. 1 of 2021 are accordingly dismissed.

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

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)