

14.11.2022
Item No.2
Ct. No.7
CHC
(disposed of)

C.O.1661 of 2022

Sri Mahadeb Chauley & ors.

Vs.

Smt. Rama Mondal

Mr. Animesh Paul

...for the petitioners

Mr. Jay Chakraborty

...for the opposite party

Affidavit-of-service furnished by the petitioners be taken on record.

Two impugned orders dated 7th May, 2022, and 2nd June, 2022, passed by learned Civil Judge (Junior Division), 1st Court, at Howrah, in Title Suit No.817 of 2021, are under challenge.

By order dated 7th May, 2022, a local inspection has been allowed appointing learned Inspection Commissioner. By another order dated 2nd June, 2022, the commission work already allowed was suspended due to non deposition of the Commissioner's fees within the time stipulated already by the court below.

Admittedly, in a suit for declaration and injunction, prayer for local inspection was proposed by the opposite party/plaintiff. There is an ad interim order of injunction already granted on the prayer of the opposite party/plaintiff. The allegation was levelled against the petitioners/defendants that they demolished the existing asbestos shade, and portion of

the suit room even during the enforcement of the ad interim order of injunction.

The further allegation raised against the defendants/petitioners is that neither defendants allowed opposite party/plaintiff to put plastic roof, nor permitted them to undertake construction, which has already been demolished. In order to reveal the actual state-of-affairs of the subject property pertaining to the alleged construction and demolition thereof, a local inspection was felt necessary, which was allowed by the order impugned dated 7th May, 2022.

Learned advocate appearing for the petitioners submits that the objection filed against the prayer for local inspection, in particular disclosed in paragraph-‘6’ of such written objection, could not be appropriately considered by the court below.

It is contended by the learned advocate for the petitioners that there has been a writ petition filed being W.P.A. No.13879 of 2021 for raising unauthorised construction on the suit property by the opposite party/plaintiff, and in connection therewith concerned Zilla Parishad was directed to hold inspection, and submit a report. The Zilla Parishad, ultimately, submitted its report, and finally the writ petition was disposed of on 8th December, 2021.

It is also contended by the learned advocate for the petitioners that Zilla Parishad furnished enquiry report

pertaining to the alleged construction of opposite party/plaintiff on the suit property, on 4th April, 2022. There has been complete suppression of such material facts at the time of allowing local inspection, which was specifically disclosed in paragraph-‘6’ of the written objection, submitted by the defendants/petitioners, learned advocate for the petitioners argues.

Upon referring such facts, learned advocate for the petitioners proposes that there is no need for further local inspection to decide the alleged construction.

Per contra, learned advocate appearing for the opposite party has strenuously disputes with the submission raised by the petitioners, and submits that in view of the liberty being granted in the writ petition, a local inspection was felt necessary for obtaining necessary modification of the injunction order, if at all needed.

Incidentally, it is submitted by the learned advocate for the opposite party that opposite party is the purchaser of subject property with some construction already reached thereon, and such property has been purchased with knowledge of the petitioners from their relatives even.

Refuting the submission of the petitioners, it is submitted further by the learned advocate for the opposite party that local inspection, if any, held to

reveal the exact status of the subject property, that will not cause any prejudice to either of the parties to this case, irrespective of the report, if any furnished by the Zilla Parishad, in connection with the writ petition referred hereinabove.

Having considered the submission of both sides, it appears that sole contention of the petitioners/defendants is that there is no need of holding any local inspection afresh, as the Zilla Parishad itself has held an enquiry pertaining to the alleged construction on the subject property, and submitted its report, which, according to the petitioners, has been deliberately kept suppressed, while making consideration of the prayer for local inspection. In the written objection, the defendants/petitioners has specifically disclosed such objection in serial no.'6' of such objection.

Upon perusal of the impugned order, it appears that the court below appears to have not appropriately considered the objections disclosed in written objection, in particular paragraph-'6' of the written objection.

Admittedly, the commission work has not been completed.

In a situation like this, the impugned orders allowing local inspection appears to be not sustainable.

The impugned orders are thus set aside with a direction upon the court below to hear out afresh local inspection petition before end of December, 2022, providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

While endeavouring such exercise, the objection raised in paragraph-‘6’ of the written objection may be considered in accordance with law along with other objections.

This would not, however, prevent the opposite party/plaintiff to controvert such objection disclosed in paragraph-‘6’ of the written objection upon production of sufficient materials, if there be any, to that effect.

As it is disclosed by the learned advocate for the opposite party that the Commissioner’s fee has already been deposited, though, there may be little delay in the meantime in depositing such cost.

It is, therefore, clarified that while making consideration of application for local inspection afresh, if the court below is of the opinion that there is need for holding local inspection afresh, the same may be considered in accordance with the law, permitting the opposite party/plaintiff to take the benefit of previous deposit of Commissioner’s fee, already revealed in the case record.

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

Parties are directed to make communication of this order to the court below.

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.)