

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Appellate Side)

F.M.A 863 of 2022
With
I.A. No. C.A.N. 1 of 2022

**Secretary, Shibam Charitable Dharmasala, Khanjanchak,
Durgachak, Haldia, Purba Medinipur**

vs.

**The Chief Executive Officer, Haldia Development Authority &
Ors.**

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Rai Chattopadhyay

For the Appellants : Mr. Bijoy Adhikary, Adv.
Mr. Ushananda Jana, Adv.
Ms. Susmita Adhikary, Adv.

For the Respondent Nos. 1&2 : Mr. Sk. Afrojul Haque, Adv.

For the State : Ms. Sutapa Sanyal, Adv.
Ms. Susnita Saha, Adv.

Heard On : 20.07.2022

CAV On : 20.07.2022

Judgment On : 22.07.2022

The Court :

1. This appeal is directed against an order dated June 20, 2022, whereby the appellant's writ petition being W.P.A 15974 of 2021 was dismissed by the learned Single Judge.

2. At the outset we may record that although the private respondents did not appear, we did not deem it necessary to adjourn the matter since we have not called upon the respondents to make submission.

3. The appellant claims to be a society registered under the Societies Registration Act, 1961. It says that its main object is doing good for the people by running Schools, Libraries, Charitable Dispensaries, Nursing Homes for poor, etc.

4. Learned Advocate for the appellants submitted that the Haldia Development Authority (in short, 'HDA'), allotted a plot of land to the appellant for being utilised by it for charitable purposes. However, the private respondents were occupying such land as encroachers. They had made construction on the land of HDA and were residing therein. In view of the failure of HDA to handover vacant possession of the plot allotted to the appellant, the appellant approach the learned Single Judge praying for a direction on HDA to forthwith makeover vacant peaceful possession of the concerned plot to the appellant free from encroachment. Initially the private respondents were not parties to the writ petition. Subsequently in terms of an order dated March 22, 2022 passed by the learned Single Judge, the respondent nos. 3 to 14 were impleaded as parties.

5. Before the learned Judge it was submitted on behalf of the private respondents that they have filed a suit being Title Suit no. 95 of 2008 against HDA and the appellant herein, praying for declaration of their right, title and interest in respect of the concerned plot. Such suit is pending. HDA

submitted that it is not in a position to deliver possession of the concerned land to the writ petitioner until disposal of the suit. In view of pendency of the suit, the learned Judge disposed of the writ petition with a request to the learned Trial Court to dispose of the tile suit pending before it as expeditiously as the business of the Court may permit. Being aggrieved the writ petitioner is before us by way of this appeal.

6. Appearing for the appellant, Mr. Bijoy Adhikari, learned Senior Counsel vociferously argued that the private respondents do not have an iota of right, title or interest in respect of the plot in question. It is admitted by them that they are not the owners of the land. The title suit is pending since 2008. Already 14 years have gone by. Nobody can say when the suit will reach its logical conclusion. The appellant is being deprived of the user of the land and is thereby prevented from carrying on highly laudable charitable activities for the benefit of the members of the public at large. He submitted that the writ Court, in the facts and circumstances of this case has sufficient power to do justice by directing HDA to put the appellant in possession of the concerned land after removing the encroachers therefrom.

7. We may have full sympathy for Mr. Adhikary's client but we are unable to grant any relief to the appellant. Good, bad, indifferent, a suit has been filed by the private respondents claiming declaration of title in a competent Civil Court. This is not in dispute. Nor is it in dispute that HDA and the appellant herein are defendants in that suit. Whether or not the private respondents herein have any right, title or interest in respect of the concerned land or otherwise entitled to be in occupation thereof, is an issue

pending before a competent Civil Court. We cannot pre-empt such suit by passing any order which may have an impact on that suit. There would be factual disputes between the parties which can only be resolved in the suit. The Writ Court is not a proper forum for resolution of such disputes.

8. Mr. Adhikary is correct in saying that the private encroachers have admitted that they are not owners of the land in question. In this connection learned Counsel has relied on the decision of the Hon'ble Supreme Court, dated September 26, 2006, rendered in ***Steel Authority of India Ltd. v. Union of India & Ors., Appeal (Civil) 4263 of 2006*** in support of the proposition that the effect of an admission in the context of Section 58 of the Indian Evidence Act is that admissions by themselves can be made the foundations of the rights of the parties and admissions in the pleadings are admissible proprio vigore against the maker thereof. Indeed, there can be no quarrel with this proposition of law. However, even if the private respondents are not owners of the land, this does not necessarily mean that they cannot have any other kind of right, title or interest in respect of the land. The Civil Court is in seisin of that issue. The learned Single Judge, in our considered view, was absolutely right in not entertaining the writ petition. We find no infirmity in the order under appeal. The same is affirmed. The appeal and the connected application are accordingly dismissed without however any order as to costs.

9. However, we modify the order under appeal to the extent that we request the learned Trial Court to dispose of the title suit pending before it

within one year from the date of a copy of this order being placed before it, keeping in view that the suit is pending for the last 14 years.

10. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(RAI CHATTOPADHYAY, J.)

(ARIJIT BANERJEE, J.)