

16.
05-08-2022
debajyoti
(Ct. no.06)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side**

**MAT 1117 of 2022
+
IA NO:CAN/1/2022**

**Sri Shymal Kumar Dutta
Vs.
Sri Kartick Chandra Dutta & Ors.**

Mr. Sabyasachi Mukhopadhyay,
Ms. Koushikee Banerjee
... For the Appellant.

Mr. Pratip Kumar Chatterjee,
Mr. Chittapriya Ghosh,
Ms. Priyanka Saha,
Ms. Komal Singh
... For Respondent No.1.

Mr. Wasim Ahmed,
Mr. Sk. Md. Masud
... For Respondent No.9.

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

A judgment and order dated July 05, 2022, whereby WPA 15382 of 2019 was disposed of, is the subject matter of challenge in this appeal.

The respondent no.1/writ petitioner approached the learned Single Judge with the grievance that the present appellant was making unauthorized construction on his land. There is no building plan in respect of such construction. Further, the appellant is encroaching on the land of the writ petitioner.

The learned Judge called for a report from the Block Development Officer. Such report was filed. Such report

apparently mentions that “no building construction permission was given from the end of the gram panchayat. There is no building plan in respect of the construction that is being made. The construction which has been made on plot no.5018 is encroaching some additional area adjacent to the plot.”

On the basis of the said report, the learned Judge recorded that the construction made by the private respondent is unauthorized. The learned Judge directed the Pradhan of the concerned Gram Panchayat to forward the enquiry report along with other relevant documents to the Sub-Divisional Officer for taking appropriate steps in the matter in accordance with law. The Sub-Divisional Officer was directed, upon receipt of the documents, to take appropriate steps to deal with such unauthorized construction in accordance with law. Being aggrieved, the private respondent no.10 in the writ petition has come up in appeal.

Mr. Mukhopadhyay, learned counsel, appearing for the appellant, says that it is absolutely incorrect to contend that there is no building plan for the construction in question. He draws our attention to pages 34 to 39 of the stay petition which together constitute xerox copies of a building plan which appears to have been sanctioned in respect of plot no.5018 which undisputedly is owned by the appellant. Our attention has also been drawn to the prayers in the writ petition. Prayer (a)(i) of the writ petition is for issuance of a mandamus commanding the respondents to cancel the plan sanctioned by the Pradhan of the concerned Gram Panchayat in respect of the appellant's land.

Prima facie, therefore, it appears that there is a sanctioned plan in favour of the appellant.

However, we are not inclined to go into the merits of the controversy. We are of the opinion that a responsible officer in the administration should look into the disputes between the parties.

Accordingly, we grant liberty to the respondent no.1/writ petitioner to make a comprehensive representation regarding his grievance to the concerned Block Development Officer within three weeks from date. If such representation is made within the time period indicated above, the Block Development Officer, being the respondent no.8 herein, shall take a reasoned decision thereon in accordance with law and the applicable rules, within a period of eight weeks from the date of receipt of the representation, after giving an opportunity of hearing to the appellant herein and the writ petitioner and/or their authorized representatives. It is made clear that the parties shall be given full opportunity of filing all documents they wish to rely upon before the respondent no.8. The respondent no.8 shall take a fresh decision without being influenced by his earlier report which was filed before the learned Single Judge. Since the appellant specifically says that there is a sanctioned plan in his favour, the respondent no.8 shall look into the matter. The respondent no.8 shall conduct such enquiry, as he may deem necessary. If required, the respondent no.8 shall be at liberty to seek assistance of the concerned Gram Panchayat which will render such assistance. Needless to say, if the respondent no.8 finds that the appellant has made illegal construction, he will communicate the same to the concerned Sub-Divisional Officer for appropriate action being taken in accordance with law.

The order under appeal is set aside. It is made clear that we have not gone into the merits of the controversy. It will be upto the respondent no.8 to take an informed decision in accordance with law.

The appeal and the connected application are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Rai Chattopadhyay, J.) (Arijit Banerjee, J.)