

WPA 20517 of 2021

Ushayatan Math-Mundamari & Anr.
Vs.
The State of W. B. & Ors.

Mr. Rahul Karmakar
Mr. Saptarshi Kr. Mal
...for the petitioners.

Mr. Chandi Charan De
Mr. H. Maity
...for the State.

Mr. Jayanta Das
Mr. S. Ghosh
...for the respondent Nos.6 & 7.

Affidavit of service filed on behalf of the petitioners is taken on record.

Heard learned counsels for the parties.

Under challenge in this writ petition is the order passed by the District Magistrate, Paschim Medinipur on 29th October, 2021 in compliance with an order of Hon'ble Division Bench of this Court passed on 27th April, 2021 in IA CAN 1 of 2021 in MAT 414/2021.

Learned counsel appearing for the petitioners submits that the District Magistrate has no authority to restrict transfer of the land in question belonging to the Math to any person.

Learned counsel is also aggrieved by the observation made by the District Magistrate in page 3 of the order impugned which is as follows:

“It appears that the Mundamari Ushyananda Vidyapith is only in possession of plot no.73 and partially of plot no.175 of Mouza- Mundamari, J. L. No.37 and suit of land is recorded in favour of Ushayatan Math as per CLR. The said school was enjoying tank for the inmates of the school within the school premises. There were several trees and herbs used to help the school having student strength more than thirteen hundred including SC & ST Hostel and the said school is running more than fifty eight years.”

Learned counsel for the private respondents submits that the petitioners have been disturbing the running of the school in the property in question continuously and without the order passed by the District Magistrate, it may be difficult for the school authorities to conduct the proceedings of the school in a safe and secure manner.

Learned counsel for the State respondents challenges the maintainability of the writ petition for the reason that as the order impugned is in compliance with the writ petition filed before this Court wherein the school has been made a party, the present writ petition is not maintainable in the absence of the school authorities.

Dealing with the maintainability of the writ petition at the outset, it appears from the record that no grievance has been made out by the petitioners against the school authorities. The private respondents have been impleaded in the writ petition in their individual capacity on the allegation that they have been disturbing the functions of the Math illegally.

In view of the same, the school is not a necessary party to the writ petition and not impleading the school as

a party respondent herein shall not render the writ petition not maintainable.

It is submitted on behalf of the parties that a civil suit is pending by and between the parties in this connection. It is also submitted on behalf of the private respondents that the suit has been dismissed for default and counter claim filed by them in the suit is pending adjudication.

On merits, pursuant to a writ petition filed by the school authorities before this Court, a co-ordinate Bench of this Court by an order dated 1st March, 2021 in WPA 2772 of 2021 directed the concerned District Magistrate to pass a reasoned order after granting opportunity of hearing to all the concerned persons and also to conduct a survey of the property. The said order was carried in appeal before the Hon'ble Division Bench, which by an order dated 27th April, 2021 in IA CAN 1 of 2021 in MAT 414/2021 clarified the Single Bench order to the extent that the District Magistrate would ensure that the functioning of the school was not disrupted and also that there was no breach of law and order and security of the school and the students were secured.

The District Magistrate proceeded to consider the representation submitted by the private respondents pursuant to the directions of this Court and ordered that the land in question belonging to the Math would not be transferred to any person by the Math authority as it was

donated for a noble cause by a deed of gift. The District Magistrate further directed both the parties to ensure that there was no breach of law and order in the school premises and not to disturb the school authority in smooth functioning of the school.

With regard to the portion of the order directing that there was no breach of law and order in the school and no disturbance would be caused to the smooth functioning of the school, there is no quarrel. It is submitted on behalf of the petitioners that this portion of the order need not be interfered with.

With regard to the portion of the order directing that the suit land belonging to the Math would not be transferred by the Math to any person, this Court is inclined to hold that the issue of transfer of a property being purely civil in nature, has to be dealt with by a Civil Court and the District Magistrate has no authority whatsoever to restrain the Math from transferring the land in question. The same proposition of law is enumerated in the order of the Hon'ble Division Bench which clearly states that possession of the land and/or encroachment are essentially civil disputes and it is only the Civil Court that can decide issues in relation to properties.

The portion of the order impugned of the District Magistrate being passed in excess of the jurisdiction of the District Magistrate and not being enjoined in law, is required to be set aside. In the premises, the portion of the

order impugned dated 29th October, 2021 passed by the District Magistrate, Paschim Medinipur stating that “it is ordered that the suit land in question belonging to Ushayatan Math would not be transferred to any person by the Ushayatan Math Authority which was donated for a noble causes as per Deed of Gift” is set aside. For the same reason, the observation made in the order to the effect that “It appears that the Mundamari Ushyananda Vidyapith is only in possession of plot no.73 and partially of plot no.175 of Mouza- Mundamari, J. L. No.37 and suit of land is recorded in favour of Ushayatan Math as per CLR. The said school was enjoying tank for the inmates of the school within the school premises. There were several trees and herbs used to help the school having student strength more than thirteen hundred including SC & ST Hostel and the said school is running more than fifty eight years” is also set aside.

With the above observations and directions, this writ petition being WPA 20517 of 2021 is disposed of.

However, there shall be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)