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09-09-2022
debajyoti
(Ct. no.06)

MAT 1466 of 2022
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IA NO:CAN/1/2022
+
CAN/2/2022

Neelachal Abasan Co-operative Society Limited & Anr.
Vs.
Charan Kumar Chabria & Ors.

Mr. Debasish Banerjee,
Mr. Subrata Saha,
Mr. S. Naskar

... For the Appellants.

Mr. A. K. Routh,
Ms. Ananya Mondal

... For Respondent Nos.1 to 6.

Mr. Lalit Mohan Mahata,
Mr. Supratim Dhar

... For the State.

Re : CAN 2 of 2022

An appeal has been filed by the applicants. In this application, leave is sought to file the appeal since the applicants were not parties before the learned Single Judge.

The material facts of the case, as submitted by learned advocates for the parties, are that a certain plot of land belonging to the predecessors-in-interest of the respondent nos.1 to 6 in this appeal, was acquired by the State for the benefit of Kolkata Metropolitan Development Authority. Such acquisition was, however, quashed by a learned Judge of this Court sometime in the year 1991. Since the land owners were unable to get possession of the land, they approached the learned Single Judge by filing the present writ petition. The writ petition being W.P.7624(W) of 2015 was disposed of by an order

dated July 30, 2019, the operative portion whereof reads as follows:

“ The learned Advocate for the petitioners submits that there is a quashing order dated July 12, 1991 passed by a coordinate bench in CO 5563(W)-65 (W) of 1989. One of the dag numbers involved in one of the writ petitions is the dag no.2426 in Mouza Kashba, Khatian No.1374. This is in CO 5564(W) of 1989. Mr. Mahata confirms that this was the CS Dag number and the RS Khatian number is 2485. Accordingly it is clear that the requiring authority cannot continue to claim possession of the said land since the certified copy of the order dated July 12, 1991 shown that the concerned plot no.2426 was corrected by hand by the Hon'ble Judge in pencil and since the dag number is not in dispute I direct that the petitioners shall produce the original deed of title to the said plot of land being dag no.2426 in Mouza Kasba under the aforesaid khatian or under CS khatian within a period of fortnight from the date of communication of this order before the respondent authorities (being the respondent no.5) and the respondent no.5 shall on satisfaction of the identity of the land and ownership of the writ petitioners return the land to the writ petitioners and/or their legal representatives within a further period of seven days from the date of production of the said deed. It is needless to mention the respondent shall cooperate with the petitioners to allow them ingress and egress of the said property on the basis of this order on the strict assurance that the interest of the respondent no.7 shall not be affected by this order. ”

The land owners subsequently filed a contempt application alleging violation of the aforesaid order, being CPAN 392 of 2020. The contempt application was disposed of by an order dated August 30, 2022, which is sought to be impugned before us. The operative portion of the said order reads as follows:

“ From the affidavit-in-compliance it is revealed that the authorities have demarcated the land of the petitioners and space for ingress and egress is available. Now the petitioners are ready to take possession of the said land with the provisions of ingress and egress as mentioned it [sic; read, in] the compliance report.

The respondents have also submit [sic; read, submitted] before this Court that the ingress and egress is available without disturbance from any corner and hence the affidavit-in-compliance filed by the alleged contemnor is accepted and rule issued by this Court is accordingly, discharged.

Though the petitioners are ready to take possession of the demarcated landed property, the alleged contemnor undertakes that shall be handed over the possession of the said plot to the petitioners within a week from date with ingress and egress and assured that the petitioners will not be disturbed for use of ingress and egress in future. ”

The applicants say that the order impugned is prejudicing them inasmuch as on the strength of such order, the respondent nos.1 to 6 are encroaching upon their land. They say that when they had come up earlier assailing the order dated July 30, 2019, the Division Bench had granted them liberty to approach the learned Single Judge to ventilate their grievance. They have filed an application before the learned Single Judge which is pending consideration. They say that some limited protection should be granted to them and, in the meantime, they will ensure expeditious hearing of the application pending before the learned Single Judge.

We are unable to accede to the prayer of the applicants. What they ventilate as their grievance before us amounts to a civil dispute, concerning title to and/or possession of land. A Writ Court cannot enter

into such dispute. In any event, in a contempt proceeding, such questions cannot be gone into.

We are also told that the order under appeal has been carried out and the District Magistrate has handed over possession of the land in question after demarcation, to the respondent nos.1 to 6. We have been shown the original Certificate of Possession dated September 05, 2022, a photocopy whereof be kept with the records.

In view of the aforesaid, we are not inclined to grant leave to the applicants to file appeal against the order dated August 30, 2022. The application being CAN 2 of 2022 is dismissed. Consequently, the stay application being CAN 1 of 2022 and the appeal being MAT 1466 of 2022 also stand dismissed.

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 all necessary formalities.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)