

04. 01.12.2022
Ct. No.6
Tanmoy

MAT 1542 of 2022

**Chowdhury Razzakul Kadir & Anr.
-Versus-
The State of West Bengal & Ors.**

**With
IA No: CAN/1/2022**

Mr. Samimul Bari, Adv.,
Mr. Md. Hasanuz Zaman, Adv.,
Mr. Md. Zeeshanuz Zaman, Adv.

...for the appellants.

Mr. Himadri Sikhar Chakraborty, Adv.,
Ms. Susnita Saha, Adv.

...for the State.

Mr. Md. Mokaram Hossain, Adv.,
Mr. Salauddin Ahamed, Adv.,
Mr. Saumen Gayen, Adv.,
Mr. Sandipan Maity, Adv.

...for the respondent no.11/
Pradhan.

Mr. Manas Kumar Das, Adv.

...for the respondent no.12.

Affidavit-in-opposition filed on behalf of the private respondent and the affidavit-in-reply thereto filed by the appellants in Court today be kept with the records.

The *Panchayat* filed a Report in the form of affidavit. The appellants file their exception to such Report in Court today. Let the same also be kept with the records.

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

A Judgment and order dated September 5, 2022, whereby the writ petition of the appellants being WPA 11905 of 2022 was disposed of, is under challenge in this appeal.

The appellants claimed to be Raiyats in respect of Dag No. 1282 in Mouza – Kandra pertaining to Khatian No. 8276. They purchased such land in 2020. They alleged that the private respondent has made a construction on the said land without obtaining requisite sanction from the concerned *Panchayat*. The appellant further says that the private respondent is a *Bargadar* in respect of the land in question. As per provisions of the West Bengal Land Reforms Act, 1955, a *Bargadar* is not permitted to make construction on *Barga* land. They further say that conversion of the land was not obtained before making construction. Criminal proceedings have been initiated against the private respondent, *inter alia*, under Section 4D of the West Bengal Land Reforms Act, 1955.

The appellants had earlier approached a learned Single Judge of this Court by filing WPA 8075 of 2021. The relevant portion of the order by which such writ petition was disposed of, reads as follows:-

“In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan,

then necessary steps shall be taken to deal with such unauthorised construction, in accordance with law.

The aforesaid respondent shall restrict the consideration of the representation with regard to unauthorized construction only and not enter into or decide any private dispute of the parties regarding right, title and interest in respect of the aforesaid land.

It is made clear that this Court has not entered into the merits of the claim made by the petitioners and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioners.

The petitioners are directed to forward a copy of the representation dated 1st February, 2021 to the aforesaid respondent at the time of communicating the order of the Court.”

Pursuant to such order, the *Pradhan* held a hearing where the appellants and the private respondent were both present. The relevant portion of the order of the *Pradhan* reads as follows:-

“That I have gone through the records and found that the erstwhile Prodhan of this Gram Panchayet duly sanctioned the said plan which supports the claim of the private respondent namely Kanu Khan that the said construction has been raised by him on the basis of the sanctioned plan.

That it may be drawn to the kind notice to the Hon’ble Court that there after I also with other members went to the spot to visit and found that the said construction has been made on the basis of the plan sanctioned on 05.08.2017 and there is no illegality and illegal construction over the said plot of land by said Kanu Khan.”

The said order of the *Pradhan* was challenged by the appellants before the learned Single Judge in the present round of litigation. The operative portion of the order under appeal reads as follows:-

It is clear that Her Lordship had directed the Pradhan to restrict the determination to the point of violation of the sanction plan and/or construction in the absence of a plan. The other issues which have been raised by the petitioners, had not been

gone into by Her Lordship and no direction was passed with regard to the same.

As such, the order which was passed by the panchayat authorities as per the direction in the earlier writ petition is relevant for the purpose of determination whether the construction has been made in accordance with a plan sanctioned by the authority. The order is in favour of such construction. The panchayat authorities have held that the construction was in accordance with law. However, the other issues raised by the petitioners with regard to title, restoration of possession and illegal construction shall be decided by the appropriate forum and/or authority. The petitioner is at liberty to approach the said authorities. The construction shall abide by any further decision of the appropriate authority.

This court has not gone into the merits of other claims of the petitioners.”

Being aggrieved, the writ petitioners are before us.

Mr. Bari, learned Advocate appearing for the appellants drew our attention to page 117 of the stay petition which appears to be a Building Plan. According to the private respondent, this plan was sanctioned in his favour on the basis whereof he has made the impugned construction. Mr. Bari says that this is a forged document. He draws our attention to the statement of the present *Pradhan* recorded under Section 161 of the Code of Criminal Procedure, 1973, in connection with the criminal case pending against the private respondent in his effort to demonstrate that no plan was ever sanctioned in favour of the private respondent. He also draws our attention to a certificate issued by the present *Pradhan* (page 119 of the stay petition) to the effect that the private respondent never

obtained any sanctioned plan for putting up the impugned construction.

As regards the allegation that without obtaining conversion the private respondent has made construction over the concerned land, criminal proceedings are pending which will be carried to its logical conclusion. We see no reason to interfere on that front.

As regards the allegation that the sanctioned plan is forged, the writ Court is not well-equipped to decide such an issue. It will be open to the appellants to approach the appropriate forum for cancellation of the plan and/or initiate criminal action as they may be advised.

As regards the contention of the appellants that the provisions of the West Bengal Land Reforms Act, 1955, stand in the way of construction being put up by a *Bargadar* on *Barga* land, we are of the view that the writ Court is not the appropriate forum for adjudicating such issue. The West Bengal Land Reforms and Tenancy Tribunal is the forum which should be approached by the appellants. We say this in view of the provisions of Sections 6, 7 and 8 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, read with Section 2(r) thereof. The West Bengal Land Reforms Act, 1955 is a “specified Act” within the meaning of Section 2(r) of the 1997 Act. It will be open to the appellants to approach

the Tribunal with their contention that the private respondent should not have constructed a building on the land in question, with or without sanctioned plan, in view of the prohibition in the West Bengal Land Reforms Act, 1955. We express no opinion on the merits of this contention of the appellants.

Learned Advocate for the appellants says that in his affidavit, the *Pradhan* says that the Building Plan in question was sanctioned by the erstwhile *Pradhan*. In the same breath, the *Pradhan* says that the records of the case are not available. This is contradictory. Obviously, the *Pradhan* is siding with the private respondent.

The aforesaid allegation is strongly disputed by learned Advocate for the private respondent.

In fine, we see no reason to interfere with the order under appeal. We have also not gone into the merits of the grievance raised by the appellants. Any other forum, if approached by the appellants with appropriate application, will decide the same, in accordance with law, without being influenced by any observation in this order or in the order of the learned Single Judge which is under challenge in this appeal.

The appeal being MAT 1542 of 2022 and the connected application being IA No: CAN/1/2022 are disposed of.

Let urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with all necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)