

21.11.2022
Ct. 5
D/L 14
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WPA 23230 of 2022

Md. Sariful Mondal

-Vs-

The State of West Bengal & Ors.

Mr. Mohinoor Rahaman,
Ms. Maria Rahaman,
Ms. Iqra Rahaman

... for the petitioner

Mr. Dipankar Ghosh

... for the State

Mr. M. Hassan

... for the respondent no. 7 & 15

The petitioner seeks a direction on the District Magistrate and Collector, North 24 Parganas to take immediate action for demolishing the construction work of a 'Mosque' at Mirzapur, North 24 Parganas. It is submitted on behalf of the petitioner that the construction of the Mosque took place some time in October, 2022 and that the construction was initiated without taking permission of the authorities under The West Bengal Religious Building and Places Act, 1985.

The respondent nos. 7 and 15 being the Secretary of Mirjanagar Bajar Jame Masjid and one of the members of the Masjid Committee are represented. Learned counsel submits that a suit for partition filed

by the petitioner and one other in Basirhat Court is pending wherein the petitioner has asked for the same relief and was refused. An order passed by the learned Civil Judge (Senior Division) at Basirhat Court dated 22nd September, 2022 is placed before the Court.

It is undisputed that the petitioner is one of the plaintiffs in the partition suit being Title Suit No. 122 of 2018 filed before the Basirhat Court. The order of the learned Civil Judge (Senior Division) records that the Report of the Commissioner appointed by the Court filed on 25th February, 2019 states that a Mosque exists in the suit property and surrounded by fencing. The order also records that an agreement dated 24th February, 2018 between one of the defendants (respondent nos. 7 and 15 before this Court) and the plaintiffs (one of the plaintiff is the petitioner before this Court) whereby the permission for erecting the Mosque was granted by the plaintiffs to the defendants. The Court hence declined the prayer for stoppage of further construction and disagreed with the contention of the petitioner that the petitioner would suffer irreparable loss and injury if such order was not passed. It is further undisputed that the petitioner has preferred an appeal from this order, which is presently pending before a coordinate Bench.

Having perused the contents of the order of the Basirhat Court, this Court is of the firm view that

granting any order of injunction may not only frustrate the pending proceeding but would also be against the principle of balance of convenience since the Mosque is existing on the suit property since 2019 and the petitioner by way of an agreement gave permission to the respondents to erect the said Mosque. There is nothing on record to deviate from the recording in the order passed in the petitioner's suit.

The petitioner is at liberty to proceed with the suit and ask for appropriate orders therein.

WPA 23230 of 2022 is accordingly dismissed without any order as to costs.

(Moushumi Bhattacharya, J.)