

05. 28.02.2023
Ct. No.6
Tanmoy

MAT 31 of 2023

**J.J. Enclave Private Limited & Ors.
-Versus-
The State of West Bengal & Ors.**

**With
IA No: CAN/1/2023**

Mr. Partha Sarathi Bhattacharyya, Ld. Sr. Adv.,
Mr. Abdul Murshid, Adv.

...for the appellants.

Mr. Sudipta Panda, Adv.,
Ms. Mun Mun Tewary, Adv.

...for the State respondents.

Mr. Mir Anuruzzaman, Adv.

...for the Rajpur-Sonarpur
Municipality.

Mr. Devajyoti Barman, Adv.,
Ms. Sanjukta Basu Mallick, Adv.

...for the private respondent.

Affidavit of service filed in Court today 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 November 21, 2022,
whereby the appellants' writ petition being WPA 17342
of 2022 was dismissed, is the subject-matter of
challenge in this appeal.

It appears that sometime in 2021, the respondent
no.7 herein, i.e. Mr. Amit Ganguly, approached a learned
Single Judge of this Court by filing WPA 13898 of 2021,
complaining that the Rajpur-Sonarpur Municipality (in

short, “the Municipality”) has been trying to construct a public road over a portion of his premises situated at R.S. *Dag* No. 2210 of Mouza - Kusumba, Police Station – Sonarpur, in the district of South 24-Parganas. Amit claimed to be the owner of a major portion of the said plot of land. The present appellants/writ petitioners intervened in such writ application and submitted that they were co-sharers in respect of the land in question.

The Municipality submitted that it had not tried to construct any public road on the plot in question. A road already existed over the said plot since long. Electric lines had also been laid along such road.

The learned Judge rightly observed that such factual disputes cannot be adjudicated by a writ Court. Accordingly, the learned Judge disposed of that writ petition by giving the following direction:-

“The Chairman of the Rajpur-Sonarpur Municipality, shall dispose of the objection raised by the petitioner which is annexure P3 at page 47 of the writ petition. While disposing of the said objection, an inspection of the premises shall be held in the presence of all the parties and thereafter upon hearing the interested parties, a reasoned order shall be passed and communicated to all.

The entire exercise should be completed within a period of three weeks from the date of communication of this order.

The question of title or encroachment etc. shall not be gone into by the Municipality at the time of hearing.”

Pursuant to such direction it appears that inspection was held on the land in question. The Chairman of the Municipality gave an opportunity of hearing to the interested parties and passed a reasoned

order on April 22, 2022. The operative portion of such order reads as follows:-

“Therefore, considering the report of the B.L.&L.R.O, Sonarpur vide Memo No. 1247/B.L.&L.R.O/sonarpur/22, dated 21/04/2022 and as per observation of the Engineering team of the Municipality headed by Sri Malay Kr Pal, Asistant Engineer, PWD, R.S.M., it appears that R.S. Dag No. 2210, Mouza – Kusumba, Police Station – Sonarpur, Additional District Sub-Registration Office at Sonarpur, District – South 24 Parganas measuring about 24 decimals land is absolutely a private land and the Municipality authority has not constructed any types of road on the R.S. Dag No.2210, Mouza – Kusumba, Police Station – Sonarpur, Additional District Sub-Registration Office at Sonarpur, District – South 24 Parganas. The Inspection report B.L.&L.R.O, Sonarpur vide Memo No. 1247/B.L.&L.R.O/sonarpur/22, dated 21/04/2022 along with the sketch map is annexed herewith being a part of the reasoned order.

It is further to be mentioned that the allegation of the writ petitioner is absolutely imaginary and baseless since the Municipality has not constructed any types of road on the R.S. Dag No.2210, Mouza – Kusumba, Police Station – Sonarpur, Additional District Sub-Registration Office at Sonarpur, District – South 24 Parganas. That the objection raised by the writ petitioner which is annexure P-3 at page -47 of the writ petition is disposed of with the above observation.”

The writ petitioners, in the present round of litigation, approached the learned Single Judge with the grievance that although by the order passed in the earlier writ petition, the Municipality had been restrained from going into the question of title, without obeying such order, the Chairman has proceeded to pronounce the land in question to be a “private land”. The writ petitioners expressed their apprehension that in view of the observation of the Municipality that the concerned Dag is a “private land”, some persons may

come forward in future to assert right in respect of such land. The same may cause serious prejudice to persons who purchased flats in the building constructed by the side of the said land.

It was submitted before the learned Judge on behalf of the private respondent that the aforesaid *Dag* is a private property. A suit for declaration and injunction in respect of the said *Dag* is pending before the 2nd Court of learned Civil Judge (Junior Division) at Baruipur, being Title Suit No. 258 of 2014. The private respondent herein is the plaintiff no.2 in such suit. The defendant in such suit is one RDB Builders Private Limited, which is a sister concern of the appellants.

The Municipality again submitted before the learned Judge that it did not construct any road over the said *Dag* and the same is a private land.

The learned Single Judge disposed of the writ petition with the following observations:-

“It appears from the documents annexed to the writ petition that the matter was considered by the Chairman in compliance with the direction passed by this Court in W.P.A. 13898 of 2021 in the matter of Amit Ganguly vs. State of West Bengal & ors.

The Court specifically directed that the question of title or encroachment etc. shall not be gone into by the Municipality at the time of hearing. The Chairman of the Municipality did not enter into the disputed question of title in respect of the property and have disposed of the matter by recording that the Municipality did not construct any public road over the aforesaid Dag.

The Court does not find any infirmity in the order passed by the Chairman of the Municipality. The Court is not inclined to exercise jurisdiction in the matter.”

Being aggrieved by the said order, the writ petitioners are before us by way of this appeal.

Appearing for the appellants, Mr. Bhattacharyya, learned Senior Advocate, essentially made the same submission that had been made before the learned Single Judge. The appellants are apprehensive that the observation of the Chairman of the Municipality in the reasoned order impugned before the learned Single Judge that the concerned land is private land, may cause prejudice to the appellants and also may have adverse bearing on the pending civil suit insofar as the appellants or their sister company RDB Builders Private Limited is concerned. Mr. Bhattacharyya also says that the inspection that was held pursuant to the order of the learned Single Judge in the earlier writ petition, was not held following due procedure.

We have not called upon the respondents to make submission.

We are of the view that the apprehension of the appellants is not well-founded. The Chairman of the Municipality has not recorded any finding as regards title to the land in question. All that the order of the Chairman says is that the Municipality has not constructed road on the said land and insofar as the Municipality is concerned, it is a private land. We make it clear that any observation in the reasoned order of the Chairman of the Municipality shall have no bearing on

the civil suit that is pending as aforesaid. No observation in the said reasoned order will be taken to be an adjudication as regards the right, title or interest in respect of the said land *inter se* the parties hereto.

We further clarify that if any party seeks to rely on the survey report dated April 21, 2022, copy whereof is appearing at page 139 of the stay petition, before the learned Civil Judge in seisin of the suit, it will be for the learned Civil Judge to decide whether the party should be permitted to rely on such report or not.

We have not interfered with the order of the learned Single Judge and we have simply modified it as we are of the considered opinion that the disputes between the parties are civil in nature, to be adjudicated and decided before the civil forum.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 31 of 2023 and the connected application being IA No: CAN/1/2023 are accordingly disposed of.

Let urgent photostat certified copy 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.)