

D/L
Item No 04
15.06.2023
KOLE

MAT 94 of 2023
With
IA No. CAN 1 of 2023

Rahul Chandra Mahata & Anr.
-Vs.-
The State of West Bengal & Ors.

Mr. R. N. Mahato,
Mr. Lalratan Mondal,
Mr. Dilip Kr. Sadhu,

...for the appellants.

Mr. Rajarshi Basu,

...for the State.

Mr. Biswaranjan Bhakat,

...for respondent no. 9.

Mr. Dhiman Ray,
Mr. Dip Chanda,

...for the respondent no. 10.

Affidavit in opposition filed on behalf of the respondent no. 9 and affidavit in reply thereto filed by the appellants be kept with the records.

Affidavit in reply of the appellants to the affidavit in opposition of the respondent no. 10 also be kept with the records.

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

A judgment and order dated November 17, 2022, whereby the writ petition of the appellants being WPA No. 7848 of 2020 was disposed of, is under challenge in this appeal.

The crux of the grievance of the writ petitioners/appellants, as would appear from the papers on

record, is that a youth club has encroached upon the land of the appellants. Not only that, the concerned Municipality at the behest of the club, has put up a boundary wall/fencing on land belonging to the concerned trust of which the appellants/writ petitioners are trustees.

The learned Judge had initially passed an order dated August 30, 2022, *interim* in nature, with the following observations:-

“It is not permissible for the Municipality to encroach upon the private land of the petitioners and make construction thereon without any expressed consent/permission from any raiyats/lessees.

In view of the above, the Jhargram Municipality is directed to immediately remove all types of constructions made over the private land of the petitioners.

All unauthorized encroachments by the Municipality shall be removed within 20th September, 2022.

*Let the matter appear in the list on 22nd September, 2022 under the heading “**For Orders**”.*

A report signed by a competent officer of the Municipality be filed on the next date of hearing disclosing whether the construction which was made unauthorizedly over the private land of the petitioners have been removed or not.

The presence of the officer of the Municipality is dispensed with.

The report filed by the Jhargram Municipality dated 29th August, 2020 is taken on record.”

That order was passed in the presence of the Municipality but the added respondent being the club in question was not before the Court.

Subsequently, the club applied for being impleaded as party respondent. Such application was allowed.

After hearing all concerned parties, the learned Judge passed the order under appeal. The learned Judge disposed of the writ petition with the following observations:-

“The learned advocate for the Municipality categorically submits that the Municipality is not occupying any land of the petitioner and no construction is being made by the Municipality encroaching the land of the petitioner. On behalf of the club fencing work is being done by the Municipality.

It appears from the submissions made on behalf of the parties that the plots of the petitioner are adjoining each other and they are not demarcated separately. One of the plots has been given permissive possession to the applicant/club. The Municipality is not encroaching or occupying any portion of the land of the petitioner and construction was made by the Municipality on behalf of the club.

In view of the above, as it appears that the primary allegation of the petitioner of unauthorized construction had shifted to the allegation of encroachment, the Municipality will not be the appropriate authority to decide the issue of encroachment and making construction thereon. It will be open for the petitioners to approach the appropriate forum for redressal of their grievances for protection of their private rights.

No further relief can be granted to the petitioners in the instant case.”

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

Firstly, Mr. Mahata, learned Advocate representing the appellants/writ petitioners, has candidly submitted that the writ petitioners are two out of several trustees. All the

trustees have not jointly filed the writ petition. On that ground alone, in our view, the writ petition is not maintainable. Although this point was not urged by any of the respondents before the learned Single Judge nor the learned Single Judge considered this point otherwise, since it is a pure point of law, we can consider the same. It is established law and the provisions of the Trust Act make it clear that all the trustees of a trust must act jointly. That is not the case here. On that ground alone, the writ petition is incurably infirm and not maintainable.

Even on merits, what appears from the submission made on behalf of the parties and the papers on record is that the dispute between the parties and the grievance of the appellants/writ petitioners pertain to encroachment on land of which the writ petitioners claim to be owners as trustees. The learned Judge has rightly come to the conclusion that such a question cannot be decided by the writ court. The learned Judge reserved liberty to the writ petitioners to approach the appropriate forum with their grievance.

Learned Advocate for the appellants drew our attention to a letter dated November 10, 2022, written by the club in question to the Chairperson of the Jhargram Municipality (Annexure 'F' to the affidavit in opposition of the respondent no. 10). With reference to the said letter, learned Advocate submitted that the Municipality is acting at the dictates of the club. The boundary wall/fencing that the Municipality has put up is as per the request of the club. This cannot be done.

It is true that the Municipality has a duty to act in accordance with the relevant statute. However, still the question of encroachment remains. In our considered view, the appellants have been rightly relegated to the civil forum by the learned Single Judge for the purpose of ventilation and redressal of their alleged grievance.

We do not find any reason to interfere with the judgment and order under appeal.

Accordingly, the appeal and the connected application are dismissed without any order as to costs.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Rai Chattopadhyay, J.)