

18.05.2023
Item No.14
Court No.6.
S. De

**F.M.A. 286 of 2022
with
I.A. No. CAN/1/2022**

**Mahadeb Chaulay.
Vs.
The State of West Bengal & Ors.**

Mr. Aniruddha Chatterjee,
Mr. Animesh Pal,
...for the appellant.

Mr. Jit Ray,
Mr. Sibendra Nath Sil,
...for the respondent nos. 4 & 5.

Ms. Mekhla Sinha,
...for the Howrah Zilla Parishad.

Mr. Gausul Alam,
Mr. Ranjit Rajak,
...for the State respondents.

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

A judgment and order dated December 8, 2021 whereby the appellant's writ petition being WPA 13879 of 2021 was disposed of, is under challenge in this appeal.

The writ petitioner had approached the learned Single Judge with the grievance that the private respondent who is also the private respondent in the appeal has made unauthorized construction which requires demolition.

The learned Judge noted that the private respondent herein has filed a suit against the

appellant herein and others being Title Suit No.817 of 2021 pending in the Court of Civil Judge (Junior Division), 1st Court at Howrah praying the following reliefs :

“a) A decree of declaration that the plaintiff being exclusive owner in respect of the schedule mentioned “suit room” has every right to use enjoy the “Suit Room” and run her business peacefully and smoothly, without any obstruction, hindrance from the defendants and their associates, in any manner whatsoever.

b) A decree of permanent injunction restraining the defendants along with their men, agents and servants from causing any interference to the peaceful possession and enjoyment of the plaintiff and/or smooth run of her business at the “suit room” and not to demolish any portion part of the “suit room” in any manner whatsoever.

c) Temporary and/or ad interim order of injunction in terms of prayer above,

d) Mandatory injunction for repairing of the “suit room” without any obstruction, from the defendant’s/or to their associates.

e) Cost of the instant suit and advocate fees

f) Any other relief/reliefs as the plaintiff is entitled under law and equity.”

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

“It is true that the question of unauthorised construction and demolition thereof are to be looked into by the authority who granted the permission under the relevant provisions of the Panchayat Act, but in view of the order passed by the Civil Court an order of demolition cannot be passed by this Court.

The remedy of the petitioner would be to challenge the order of the Civil Court in accordance with law.

A report has been filed by the Sub-Divisional Officer, Sadar, Howrah, from which it appears that an enquiry was made on the basis of the complaint of the writ petitioner.

This order will not prevent the Zilla Parishad from making any enquiry with regard to the correctness of the allegation of unauthorised construction allegedly raised by the respondent no.8 on premises no. Mouza Bally, J.L. No.14, Khatian no.4270, Dag No.7567, Sastilata, Ghoshpara, Bally, Anandanagar, Police Station Nischinda (formerly under Bally) District Howrah. An inspection shall be made in the presence of the parties and a report

shall be prepared and served upon the parties.

The petitioner shall be at liberty to approach the Civil Court for appropriate modification and also challenge the ad-interim order in accordance with law.”

Being aggrieved, the writ petitioner has come up by way of this appeal.

Learned advocate for the appellant says that the appellant is in no manner desirous of disturbing the possession or business activities of the private respondent herein. However, the appellant has made unauthorized construction without obtaining sanction from the Howrah Zilla Parishad. Such construction must be demolished by the appropriate authority as per the applicable statute. Learned advocate draws our attention to a report filed by the Assistant Engineer, Howrah Zilla Parishad before the learned Single Judge as per direction of the learned Judge in the order dated December 8, 2021. Such report is to the following effect :-

“No sanction plan was found for the alleged structure made by respondent no.8 at RS Dag No.7567, corresponding Khatian No.4270, Mouza-Bally, J.L. No.14 in the official record of Howrah Zilla Parishad.

The inspection was held on 07-01-2022 by the undersigned, with prior notice to all parties. Despite the notice served, no respondents were present during the inspection except the petitioner.

The petitioner identified the site, the alleged structure, and the demarcation of the land between petitioner and private respondent no.8.

At the time of inspection, it was observed that the structure was constructed up to lintel level and has only three walls (two sides and rear) and there was no roof and front wall in this structure.

The private respondent Smt. Rama Mondal w/o Sri Santu Mondal constructed an unauthorized incomplete structure adjacent to the petitioner's property without leaving any clear space. It appeared that the construction work has been stopped for a few years."

Accommodation is sought for on behalf of the private respondent. However, in view of the nature of the order that we propose to pass, we are not inclined to defer hearing of this matter.

We grant liberty to the appellant to make a fresh comprehensive representation to the respondent no.5 herein being the Bally Gram Panchayat, within four weeks from date, with a copy to the private respondent. If such representation is made within the

time period indicated, the competent officer in the respondent no.5/Panchayat shall dispose of such representation in accordance with law and the applicable rules and regulations, by a reasoned order, within a period of eight weeks from the date of receipt of the representation, after giving opportunity of hearing to all concerned parties including the appellant and the private respondent herein or their authorized representative.

We make it clear that the respondent no.5 shall only consider the issue of unauthorized construction and not go into any title dispute. In the event, the Panchayat finds that the impugned construction is unauthorized, appropriate remedial action will be taken by the Panchayat in accordance with law.

The order under appeal is modified to the aforesaid extent.

Till the Gram Panchayat decides the issue, the private respondent shall not make any further construction at the concerned site.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondents.

Accordingly, FMA 286 of 2022 is disposed of along with the application being I.A. No. CAN 1 of 2022.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)