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15-03-2023
debajyoti
(Ct. no.06)

MAT 153 of 2023
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IA NO:CAN/1/2023

Swapan Deyati & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Bhagabat Chowdhury,
Mr. Sk. Toslim Ali,
Ms. Saba Parween

... For the Appellants.

Mr. Rwitendra Banerjee,
Mr. Sandip Kundu,
Mr. Devdutta Pathak

... For Private Respondents.

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

A judgment and order dated January 02, 2023 whereby the writ petition of the appellants being WPA 17989 of 2022 was disposed of with certain directions, is the subject matter of challenge in this appeal.

The writ petitioners approached the learned Single Judge with a complaint of inaction on the part of the Panchayat Authorities. According to them, the private respondents have raised unauthorized construction without obtaining sanction from the Amta Gram Panchayat and also without obtaining conversion of the concerned land from 'Sali' to 'Bastu'. However, in spite of complaints having been lodged, the Gram Panchayat is not taking any steps.

Learned advocate for the private respondents produced documents before the learned Single Judge showing that the land had been converted from 'Sali' to

'Bastu'. It was further brought to the learned Judge's notice that two civil suits are pending between the parties. It was submitted that in view of the injunction order passed in one of the suits, the private respondents have not raised any construction on the concerned land. It was also submitted on behalf of the private respondents that the prayer of the present appellants, who are the plaintiffs in one of the two civil suits, for local inspection, has been turned down by the Civil Court.

Taking note of the aforesaid submission, the learned Judge disposed of the writ petition with the following observations:-

“ Under such circumstances, the writ petition is disposed of granting liberty to the petitioners to pursue their remedies before the learned civil court. If it transpires during the proceedings before the civil court that there was already an existing construction without permission of the authorities, the petitioners shall be at liberty to take appropriate steps before the appropriate forum and also take appropriate steps before the learned civil court, in accordance with law.

It is made clear that construction cannot be permitted without sanction/permission from the appropriate permission granting authority.

The court has not gone into the merits of the allegation. The issues which are subject matter of the civil suits have not been considered. The learned civil court shall proceed independently. ”

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

Learned advocate for the appellants says that the construction raised by the private respondents is completely unauthorized. The concerned Gram Panchayat should be directed to at least hold a local inspection and if they find substance in the grievance of the appellants, then they should take appropriate steps.

Learned advocate for the private respondents says that if any order is passed by this Court, the same will prejudice the interest of the private respondents in the pending civil suits. The Civil Court having declined to pass an order for local inspection at the instance of the present appellants, no order in that regard should be passed by this Court.

We have considered the rival contentions of the parties. We are of the view that the Panchayat Authorities should look into the matter. We direct the Panchayat Authorities to hold due inspection of the alleged unauthorized construction made by the private respondents. Such inspection shall be held upon prior notice to any one of the appellants and any one of the private respondents. The private respondents would be at liberty to produce documents to substantiate their case that the construction is not unauthorized. If the Panchayat Authorities, after due inspection and after giving opportunity of hearing to the parties, find that any unauthorized construction has been raised by the private respondents, the Authorities shall take necessary steps for demolition thereof.

We make it clear that the inspection that we have ordered hereby, is completely different from the local inspection that was declined by the learned Civil Court. We also clarify that nothing in this order will

have any bearing on the pending civil suits. The learned Civil Court shall decide the two suits independently and in accordance with law, without being influenced by any observations in this order.

Learned advocate for the private respondents says that proceedings are pending before the Land Reforms Authorities. We clarify that nothing in this order shall have any bearing on such proceedings.

The appeal and the connected application are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the application for appropriate orders shall be deemed not to have been admitted by the respondents.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)