

ML 184
26.04.2023
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 5247 of 2022

**Lakshman Prasad Dey
-versus
The Union of India & Ors.**

**Mr. Sailen Naskar.
...For the Petitioner.**

**Mr. Snehasis Jana.
...For the Respondent No.8.**

**Mr. Supratim Dhar,
Mr. Santimoy Bhattacharjee,
Mr. Ziaul Haque.
...For the Respondent No.5.**

Affidavit-of-service filed in Court today is taken on record.

The petitioner is aggrieved by the order passed by the Ramjibanpur Municipality in not allowing the petitioner to continue with the construction work under the PMAY Scheme on the ground that the issue of encroachment is pending consideration in a civil suit.

It appears from the documents annexed to the writ petition that a civil suit being T.S. No. 56 of 2020 challenging illegal encroachment is pending consideration before the Learned Civil Judge, Senior Division at Ghatal.

The suit was filed by the private respondent against the petitioner alleging illegal encroachment.

Learned advocate appearing for the petitioner submits that the land in question is the private land of the petitioner and not of the private respondent. There is no question of encroaching the land of the private respondent.

The Municipality upon satisfaction sanctioned the plan in favour of the petitioner and as the petitioner is making construction in accordance with the said plan, the Municipality ought to permit the petitioner to conclude the construction work.

If the construction work is not concluded in a time bound manner, the financial benefit under the scheme will not be available to the petitioner.

Learned advocate appearing for the private respondent submits, upon instructions, that the petitioner has encroached the land of the private respondent and since the suit is pending, the petitioner ought not to be permitted to continue with the construction work.

Upon hearing the parties, it appears that the issue is with regard to encroachment of land.

A title suit is pending consideration over the said issue. At this stage permitting the petitioner to continue with the construction work may give rise to future legal complication.

The Municipality not being the appropriate authority to decide title ought to wait for an order from

the competent civil court declaring title of the parties. After such an order is received from the Court, the Municipality shall act in accordance with the same.

The Court does not find any reason to interfere in the present writ petition.

The writ petition fails and is hereby dismissed.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)