

Item No. 07

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON : 05.04.2023

DELIVERED ON : 05.04.2023

CORAM:

**THE HON'BLE ACTING CHIEF JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**MAT 589 of 2022
with
I.A. NO. CAN 1 of 2022
I.A. NO. CAN 2 of 2023**

**Bharati Tanti
vs.
Dinonath Mondal & Ors.**

Appearance:-

Mr. Gouranga Kumar Das
Mr. Kapil Chandra Sahoo

... for the appellant

Mr. Amar Mondal, A.G.P.
Ms. Srilekha Bhattacharyya

... for the State

Mr. Balai Lal Sahoo
Mr. Sankha Prasad Roy
Mr. Chandan Chakraborty

... for the respondent no. 1

Mr. Nilotpal Chatterjee

... for the D.M. South 24 Parganas

JUDGMENT

***(Judgment of the Court was delivered by The Hon'ble Acting Chief Justice
T.S.SIVAGNANAM)***

1. This intra-Court appeal is directed against the order dated 30.11.2021 passed in WPA 2249 of 2021 filed by the respondent no.11. The appellant is the private respondent no.11 in the writ petition. The allegations in the writ petition are that the appellant has encroached into a land belonging to the National Highways and put up a construction and the ingress and egress to the petitioners' property has been affected. The learned Single Judge has disposed of the writ petition by directing the authorities of the National Highways Division to enquire into the matter and if they find there is any encroachment or construction has been made on the land of the National Highway Authority, urgent steps should have been taken to demolish the said construction.

2. Learned counsel for the appellant would vehemently contend that the writ petitioners are guilty of suppression of material facts and could not have approached the learned writ Court by filing a writ petition under the residuary classification. Further, it is submitted that the appellant is in possession of the property for over 40 years and she has also put up a construction.

3. Learned counsel for the State and the learned counsel for the petitioners submitted that in terms of the direction an enquiry was conducted and an order was also passed by the Executive Engineer of the National Highways Division-I, Public Works (Roads) Directorate dated 29.03.2023 and in reply, learned counsel for the appellant would submit that the construction put up by the appellant is under the scheme of the Government of India. In any event, the order having been passed by the appropriate authority, the direction issued in the writ petition

will become redundant. Therefore, the only remedy available to the appellant is to challenge the correctness of the order passed by the Executive Engineer, National Highways Division-I, Public Works (Roads) Directorate dated 29.03.2023 or any other order that would have been passed thereafter.

4. With such liberty, the appeal stands **disposed of** and consequently the connected applications also stand **disposed of**.

5. After the order was dictated, learned counsel for the State submitted that an appeal before the District Magistrate filed by the appellant is not maintainable as he is not the competent authority. If that be so, the District Magistrate shall either return the memorandum of appeal to the appellant or forward the same to the appropriate authority with intimation to the appellant.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)

RP/AN (AR.CT.)