

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

M.A.T. 621 of 2023

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Sri Bhola Paik

Vs

The State of West Bengal & Ors.

With

M.A.T. 622 of 2023

Sri Bhola Paik

Vs

Bangiya Sakharata Prasar Samity & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellant : Mr. Subir Sanyal, Adv.
 Mr. T. Mukherjee, Adv.
 Mr. Sandip Das, Adv.

For the KMC : Mr. Achintya Kumar Banerjee, Adv.
 Mr. F. Haque, Adv.
 Mr. D. Ghosh

For the State : Mr. Jahar Lal De, Adv.
 Mr. Ansar Mondal, Adv.
 Mr. Rudranil De, Adv.

For Respondents / writ petitioners : Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
 Mr. J. Khan, Adv.

Judgment On : 03.08.2023

Apurba Sinha Ray, J. :-

1. These two appeals are directed against a common judgment and order dated March 29, 2023, whereby a learned Single Judge of this Court disposed of two writ applications filed by the appellant herein being W.P.A. 22925 of 2022 (Sri Bhola Paik v. The State of West Bengal & Ors.) and W.P.A. 15466 of 2022 (Bangiya Sakharata Prasar Samity & Anr. v The State of West Bengal & Ors.). Accordingly the two appeals have been taken up for hearing and disposal together.

2. The appellant claims to have become the owner of a plot of land situated at 681, P. Majumdar Road, Kolkata by virtue of a registered Deed of Conveyance dated 25.07.2018. The respondent Nos. 5 and 6 in MAT 621 of 2023 are the owners of the adjacent plot of land situated at 294, P. Majumdar Road, Kolkata by virtue of a registered Deed of Indenture executed in the year 1992. Their names had been mutated in the municipal corporation's records. The appellant had also mutated his name in respect of the premises No. 681, P. Majumdar Road, Kolkata and thereafter made an application before the Kolkata Municipal Corporation for sanction of building plan in his favour and the same was duly approved. Thereafter, the appellant commenced the construction work of a multistoried building at 681, P. Majumdar Road, Kolkata. The respondent Nos. 5 and 6 raised an objection before the Corporation stating that the appellant started his construction upon premises no. 294, P. Majumdar Road, Kolkata which

belongs to the respondent No. 5, namely, Bangiya Saksharata Prasar Samity, instead of premises No. 681, P. Majumdar Road, Kolkata.

3. Thereafter, the respondent Nos. 5 and 6 filed Title Suit No. 105 of 2022 and the petitioner/appellant also filed a Civil Suit being Title Suit No. 118 of 2022 before the Learned Civil Judge (Junior Division) 2nd Court Alipore along with an application under Order 39 Rule 1 and 2 praying for injunction restraining the defendants/respondents Nos. 5 and 6 herein from disturbing the peaceful possession of the appellant/plaintiff in respect of premises no. 681, P. Majumdar Road, Kolkata. The said application was allowed on contest and the Learned Court found that the defendant had no right to interfere with the construction work of the petitioner/plaintiff which was being carried on at premises no. 681, P. Majumdar Road, Kolkata and was further pleased to direct the respondent Nos. 5 and 6 herein not to disturb the construction work of the plaintiff over the suit property till the final disposal of the suit.

4. The appellant further states that the respondent Nos. 5 and 6 made a complaint before the Special Municipal Commissioner with a prayer for restraining the petitioner from making any construction upon the premises no. 681, P. Majumdar Road, Kolkata and the said complaint was finally heard on 5th July, 2022 by the Special Municipal Commissioner and after conclusion of the hearing, as the Special Municipal Commissioner failed to identify premises no. 681, P. Majumdar Road, Kolkata he arbitrarily suspended the building plan sanctioned by the building department in

respect of premises no. 681, P. Majumdar Road, Kolkata till the title of the land in question is decided by a competent court of law.

5. According to Learned Counsel of the appellant, Mr. Subir Sanyal the special Municipal Commissioner has no right to ignore the order of injunction passed by the Learned Civil Judge (Junior Division) 2nd Court, Alipore, South 24 Parganas, which was also affirmed by the Learned Additional District Judge, 15th Court, Alipore, South 24 Parganas in appellate jurisdiction and as such the said order dated 5th July, 2022 passed by the said Special Municipal Commissioner is illegal and arbitrary. Learned Counsel has also submitted that after the plan was sanctioned the appellant invested a huge sum of money and raised a multistoried building at 681, P. Majumdar Road, Kolkata and if the said sanctioned plan remains suspended till the final disposal of title dispute between the parties it would cause serious injury and prejudice to him. According to him, the Learned Single Judge did not consider this aspect, particularly when it was time and again brought to the notice of the said Commissioner that the municipal authority accorded sanction of the building plan after considering all the relevant materials.

6. Mr. Sanyal has further referred to a decision reported at **2010 AIR SC 2210 (Manohar Lal (Dead) By Lrs. v. Ugrasen (Dead) By Lrs. And Others)** in support of his contention that the effect of the interim injunction order cannot be ignored by the authority. In this regard he has raised a question as to whether an order passed or action taken by a statutory authority in

contravention of an interim order of court is enforceable or not. He has categorically stated that in this case as the Special Municipal Commissioner has ignored the injunction order passed by a competent Civil Court, the order passed by him suspending the duly approved sanctioned plan is a nullity and therefore non-est. However, Learned Counsel of the appellant has also undertaken that if the construction work is permitted to be completed, the appellant shall not claim any equity for such completion and shall abide by the final order of the competent Civil Court with regard to the title of the parties to the land.

7. Learned Senior Advocate, Mr. Bikash Ranjan Bhattacharyya appearing for the respondent Nos. 5 and 6 has submitted that the dispute between the parties is in respect of title to land as well as identification of the same. The joint inspection report shows that there is no existence of premises No. 681, P. Majumdar Road, Kolkata. If a building plan is sanctioned by the Kolkata Municipal Corporation due to suppression of material facts from the side of the applicant, such sanctioned plan cannot be said to be a valid one. According to him, the Special Municipal Commissioner has rightly suspended the said sanctioned plan till the final adjudication on the issue of title by a competent court of law. Learned Counsel for the respondent Nos. 5 and 6 has also drawn the attention of this Court to order no. 7 dated 28.09.2022 passed by the Learned Civil Judge (Junior Division), 2nd Court, Alipore whereby the Learned Judge had refused to allow the prayer of police help of the appellant on the ground that the sanctioned plan was suspended by the said Municipal Commissioner.

Learned Counsel has further argued that a revisional application against the order passed by the Learned Additional District Judge, 15th Court, Alipore, South 24 Parganas, affirming the order dated 12.05.2022 of the Learned Civil Judge, (Junior Division) is pending before the Hon'ble High Court and therefore the injunction order passed by the Learned Civil Judge, (Junior Division), 2nd Court, Alipore, South 24 Parganas cannot be said to have reached finality. Learned Counsel has prayed for dismissal of the appeals.

8. Learned Counsel appearing for the Kolkata Municipal Corporation, Mr. Achintya Kumar Banerjee, has submitted that the antecedent of the appellant who is a promoter, is not at all good. However, he has also submitted that the order passed by the said Special Municipal Commissioner is justified and a reasonable one in the factual scenario of the case.

Court's View

9. After going through the materials on record and also the documents furnished by both the parties, it appears that the construction raised by the appellant on the relevant land after obtaining sanctioned plan therefore from Kolkata Municipal Corporation. It is also admitted that a multistoried building has been constructed by the appellant. The Learned Civil Judge, (Junior Division), 2nd Court, Alipore, South 24 Parganas has allowed the temporary injunction petition filed by the appellant by passing an order to the following effect:-

“That the petition U/O 39 R 1 & 2 is hereby heard, considered and allowed on contest without any order as to the costs.

Consequently, the petition U/O 39 R 4 heard, considered and rejected on contest without any order as to the cost.

The defendant and his men and agents are hereby temporarily restrained from disturbing the peaceful possession of the plaintiff in respect to the suit property and restraining the defendant and his associates from disturbing the construction work of the plaintiff over the suit property till the final disposal of the suit.

Anything expressed herein shall not affect the merit of this case.

Application is disposed of and shall form part of the main suit.”

10. The said order was affirmed by the Learned Additional District Judge, 15th Court, Alipore, South 24 Parganas on 24.08.2022 in Misc Appeal No. 146 of 2022, by an order to the following effect:

“that the Misc Appeal be and the same is dismissed on contest.

Order No. 13 dated 12.05.2022 passed by Ld. 2nd Civil Judge (Jr. Division), Alipore in Title Suit No. 118 of 2022 is hereby affirmed.”

Let a copy of this order along with LCR be sent to the Ld. Trial Court for information and necessary action.”

10.1. I have also gone through the order passed by the Special Municipal Commissioner and the relevant portion of the said order is as follows:-

“that the building plan sanction granted in respect of Premises No. 681, P. Majumder Road by the concerned Borough of Building Department in favour of Bhola Paik vide B.P. No. 2021120015 dated 07.04.2021 be kept suspended until the title of the land in question is decided by the competent court where the matter is pending. In the meantime, concerned borough of Building Department shall take appropriate measures so that no further construction is proceeded on the basis of the building plan sanction no. 2021120015 dated 07.04.2021.

Let the order be communicated to all the parties.”

11. In our view, as the Special Municipal Commissioner found that there is a title dispute between the parties, he rightly opined that a competent Civil Court of Law is the appropriate forum which can adjudicate such dispute properly and therefore he has left the matter to the discretion of the competent Civil Court of Law.

12. Now, it appears that the order of injunction passed by the Learned Civil Judge, (Junior Division), 2nd Court, Alipore, South 24 Parganas on 12.05.2022 was not brought to the notice of the Special Municipal Commissioner and as such he has passed the order as aforesaid without considering the effect of such order. That order was affirmed by the first appellate court. In our opinion, as the competent Civil Courts have already allowed the appellant to carry on his construction at the relevant property after considering the relevant documents, we think that the order of the Special Municipal Commissioner passed on 05.07.2022 cannot be sustained at this stage. We have also considered the case law of **Manohar Lal (Dead) By Lrs. (supra)** and in our opinion, as the competent Civil Courts are prima facie satisfied with the contention of the plaintiff/appellant as to his title to the property, we think that the ends of justice shall be best served if the appellant is allowed to complete his construction on the relevant land subject to certain conditions. Accordingly, the order dated 5th July, 2022 by the Special Municipal Commissioner suspending the relevant sanctioned plan of the appellant being No. 2021120015 is hereby set aside and the original plan is restored. The impugned judgment and order passed by the Learned Single Judge in WPA No. 22925 of 2022 and W.P.A. 15466 of 2022

on 29.03.2023 is also set aside. The two appeals stand allowed on contest but without any order as to the costs. The connected application if any, is disposed of.

13. We make it clear that we are permitting the appellant to complete the construction work since keeping the structure in its present condition will not enure to anybody's benefit. On the contrary, the structure is likely to undergo serious damage. The interior of the structure is exposed to the elements of nature as the doors and windows have not yet been fitted. Society's valuable resource is likely to be wasted altogether if the structure is directed to be kept in the present condition.

14. The appellant is at liberty to carry on with the construction work in accordance with the previously sanctioned plan subject to the conditions that he or his agents, partners and any other person under him shall not use the property, nor create any third party interest in respect of the same, nor transfer the said property in any manner whatsoever without the leave of the competent Civil Court of Law. However, the appellant will be at liberty to undertake regular maintenance work if the same is required, to keep the building in a proper condition.

15. Secondly, the Kolkata Municipal Corporation shall not issue completion certificate to the appellant or his partners, agents etc. until final adjudication of title dispute between the parties.

16. Thirdly, both the parties shall expedite the conclusion of both the suits filed by them.

17. Fourthly, the appellant, his men, agents or partners shall not claim any equity for carrying on construction and completion of the same, and in case, it is held by the competent Civil Court that the appellant has no title to the land as referred to above, he shall remove the entire construction at his own cost.

18. The Learned Civil Judge at Alipore dealing with the matters is requested to dispose of the suits as expeditiously as he/she can without being influenced by any of the observations of this Court made in these appeals.

19. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)