

08.12.2023
Sl. No.7(DL)
srm

C.O. No. 1208 of 2023

Madhusudan Das

Versus

Sri Gopal Chandra Das & Ors.

Mr. Tapash Kuma Dey,
Ms. Saswati Ghosh Sinha

...for the Petitioner.

Mr. Sukanta Chakraborty,
Mr. Anindya Halder

...for the Opposite Party Nos.1 to 7.

In the order dated August 16, 2023, the name of the opposite party No.1 in the cause title be corrected as “**Sri Gopal Chandra Das**”.

Let this order be treated as a part of the original order dated August 16, 2023.

The other parts of the order remain unaltered.

The department is directed to take steps accordingly.

The revisional application arises out of an order dated March 3, 2023 passed by the learned Civil Judge (Senior Division), Serampore, Hooghly, in Title Suit No.18 of 2018.

By the order impugned, the learned court below was of the view that the petitioner/defendant No.3, in effect, had prayed for modification of an order of *status quo* on the ground

that the petitioner's name had been listed at Serial No.140 of the beneficiaries under the Pradhan Mantri Awas Yojana (PMAY). On the funds to be allotted under the scheme, the petitioner wanted to construct a '*pucca*' room after demolishing the mud house.

It appeared to the Court that the petitioner had already availed of a benefit under a government project of Nirmal Mission on an earlier occasion, without intimation to the court. Relying on a decision of this Court, the learned court below held that until the partition was effected in meets and bounds, the construction could not be permitted.

In my opinion, the learned court below had failed to take into consideration that if the petitioner had been sanctioned funds for construction under the PMAY, the matter required consideration. However, what appears from the records is that although the petitioner's name was listed, the petitioner has not been able to show that he had received any funds from the government which was supposed to be credited to his bank account. Moreover, when there was a subsisting order of *status quo*, the same which requires modification.

Even if the construction under the housing scheme is allowed, it should be allowed in the presence of a

commissioner so that the petitioner restricts such construction to the drawing or model plan to be given by the authority.

Lastly, such construction, during pendency of a partition suit, has to be subject to the final decision in the partition suit and the petitioner cannot claim any equity in respect of the said construction, even if the petitioner had received funds under the housing scheme.

These aspects ought to have been looked into by the learned court below before passing the order impugned.

Under such circumstances, the revisional application is disposed of by modifying the order impugned and by passing the following directions:-

- (a) The petitioner will file an application under Order XXXIX Rule 4 of the Code of Civil Procedure along with all details including the fact of sanction of funds in favour of the petitioner, under the housing scheme.
- (b) The petitioner shall also file an application for appointment of an Advocate Commissioner, who shall visit the locale and ensure that such construction is being made in accordance with the scheme and the model plan.

(c) The learned court below shall decide the said applications on merits.

In case the petitioner had qualified for the benefit and been sanctioned the funds under the scheme, he deserved some kind of conditional permission from the court. Otherwise, if the money is sanctioned but not utilized, further instalment shall not be granted by the government and the poor beneficiary will suffer. The money sanctioned is to be utilized within a time frame. Such construction will always be subject to the final decision in the partition suit and the petitioner shall not claim any equity in respect of such construction at any time. The construction if allowed shall be restricted to the area in occupation of the petitioner.

This order shall not be construed as a direction upon the government authorities to include the petitioner as a beneficiary under the Pradhan Mantri Awas Yojana or Banglar Awas Yojana.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)