

18.09.2023
Sl. No.20(DL)
srm

C.O. No. 1226 of 2022

Arup Naskar

Versus

Tapas Naskar & Anr.

Mrs. Pampa Dey (Dhabal)

...for the Petitioner.

The revisional application has been filed challenging an order dated March 24, 2023 passed by the learned Additional District Judge, Fast Track (2nd Court) at Diamond Harbour, South 24-Parganas, in Misc. Appeal No.11 of 2020.

Misc. Appeal No.11 of 2020 arises out of an order dated September 24, 2020 passed in Title Suit No.163 of 2020. By the order dated September 24, 2020, the plaintiff and the defendant Nos.1 to 6 were directed to maintain *status quo*. Aggrieved by the aforementioned order, the defendant Nos.1 to 6 preferred a misc. appeal. In the misc. appeal, a prayer was made to allow the said defendants to remove the bamboos and other construction materials lying at the site. The learned lower appellate court allowed such prayer on the ground that the bamboos and construction materials which were lying at the site could be removed as the same would not cause any

prejudice to the plaintiff. The misc. appeal was disposed of. The order of status quo was neither vacated nor altered in any other way.

Mrs. Dey (Dhabal), learned Advocate for the petitioner submits that the misc. appeal was allowed without considering the decision of the Hon'ble High Court passed in MAT No.518 of 2020 and W.P. No.5410(W) of 2020.

It appears that a learned single Judge had directed the respondents/panchayat authorities to restrain the opposite parties from causing repair or from making any construction, after the lockdown. Further direction was passed to dispose of the representation of the petitioner dated April 8, 2020.

The order was challenged by the defendants. The Hon'ble Division Bench passed the following order:

“Under such circumstances, we confirm the order passed under appeal. We direct the Panchayat authority to dispose of the representation dated 8th April, 2020 within a period of three weeks from the date of communication of this order.

The appeal and the applications are disposed of.”

The order of the learned Single Judge merged with the order in appeal. The direction of the Hon'ble Division Bench was that the panchayat authorities should dispose of the representation dated April 8, 2020 within a period of three weeks.

It is submitted that such order was sought to be modified by the learned lower appellate court. It is further submitted that the panchayat authorities have not taken any steps.

In my view, the issue to be decided by the panchayat authorities would be whether any repair or construction was going on in contravention to Section 23 of the West Bengal Panchayat Act, 1973. Rule 19 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 makes a special provision with regard to the nature of repair that can or cannot be allowed. Admittedly, there is no decision from the panchayat authorities with a finding that there has been unauthorised repair or construction.

However, such issue will be decided by the panchayat authorities as per the direction of the Hon'ble Division Bench. The order which has been passed in misc. appeal is an order allowing the opposite parties to remove the bamboos and construction materials which were lying wasted. Such order does not amount to either allowing construction or modifying the order of *status quo*. Such order will not give any benefit to the opposite parties. Moreover, if the panchayat authorities are of the opinion that unauthorized repair had been made,

enquiry into the nature of construction and repair shall be done.

The fact that the bamboos and other construction materials were lying in the property up to March 24, 2023 is a matter of record and the panchayat authorities can proceed accordingly and take into account of the same. The fact of removal of the bamboos and building material will not enure to the benefit of the opposite parties, if any enquiry is made by the authorities.

The revisional application is, thus, disposed of.

There shall be no order as to cost.

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

(Shampa Sarkar, J.)