

05.07.2023
Sl. No.20(DL)
srm

C.O. No. 1281 of 2023
Shrimati Satishri Patra & Anr.
Versus
Ashis Patra & Ors.

Mr. Rabindranath Mahata,
Mr. Aritra Shankar Ray
...for the Petitioners.
Mr. Sukanta Das
...for the Opposite Party No.1/Plaintiff.

Despite service, none appears on behalf of the opposite party Nos.2 to 8. Affidavit of service is taken on record.

The dispute in this revisional application is whether an alleged construction shall be allowed as prayed for by the petitioners who are defendant Nos.1 and 2 in the suit for partition, by modifying the order of *status quo* dated March 29, 2023 passed by the learned Civil Judge (Senior Division), 3rd Court at Medinipur, in Title Suit No.30 of 2023.

The opposite party No.1 filed a partition suit. In the said suit, an order of *status quo* was passed. The petitioners filed an application under Section 151 of the Code of Civil Procedure praying for permission to raise a construction. It is stated that the order of *status quo* had been passed when partial construction of a structure on Plot No.37 had been completed from the funds received under the PMAY(G) scheme. The prayer is that unless the roof casting is allowed, the

construction would suffer serious wear and tear and the iron rods used for such construction would be left exposed.

The learned court below rejected the said application on the ground that if the defendant Nos.1 and 2 were allowed to complete the construction on the suit land involved in the dispute, the situation may become irreversible by the time the dispute is decided finally and will preclude a fair and just decision in the matter.

Mr. Das, learned Advocate appearing for the plaintiff/opposite party No.1 submits that not a scrap of paper had been produced before the learned court below to justify the claim of the petitioners/defendant Nos.1 and 2 that the construction was under the PMAY(G) scheme. The model plan/sketch usually supplied to the beneficiaries under the scheme was also not placed before the court. Under the garb of undertaking a construction from funds received from a beneficial housing scheme, the defendant Nos.1 and 2 were raising a comparatively large construction, which could not be under any scheme.

From the order impugned and from the application filed by the defendant Nos.1 and 2, it appears that there was no specification of the area of construction. The date of receipt of the benefit, the date of disbursement of the instalments, the

bank account details through which such instalments were received, have not been mentioned in the application. The size of the construction, the model plan, which was supplied for construction under the scheme has also not been mentioned. Hence, the prayer for Mr. Mahata that unless the construction is completed the benefit under the scheme would expire and the money would go back, is not accepted by the Court at this stage.

The law is that a person in occupation of an undivided property may be allowed to repair or construct, under exceptional circumstances and to prevent extreme hardship.

The order impugned is modified with the following directions:

- (a) The petitioners will file a composite application with evidence that the petitioners are, or any of them is, a beneficiary under the PMAY(G) scheme.
- (b) Supporting documents with regard to the list of beneficiaries, allotment of funds, receipt of funds in the bank account of the beneficiary, shall be annexed to the said application.
- (c) The model plan supplied, delineating the area and the nature of construction under the scheme, shall also be annexed.

- (d) A certificate from the Block Development Officer that one of the petitioners is a beneficiary under the scheme shall be filed.
- (e) All the contesting parties shall be entitled to file their written objections to said application.

Once such application along with all the documents as indicated above is filed, the learned court below shall consider the fact whether the petitioners were the beneficiaries under a scheme and if it is found that the construction sought to be made was exclusively limited to the model plan and from the money received under the scheme, the court shall allow such construction in the presence of an Advocate commissioner at the cost of the petitioners. If it is found that the documents, as directed to be filed by this Court, are not filed and there is a doubt as to whether the petitioners or any of them were beneficiaries under the scheme and/or were not constructing strictly in accordance with the model plan, the court shall not allow any such construction.

If construction is allowed, the same shall be exclusively in terms of the beneficial scheme and the model plan. The petitioners shall not claim any equity in respect of the said construction. The construction will abide by the result of the final adjudication of the partition suit.

The revisional application is, thus, disposed of.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)