

10.05.2023
Court No. 19
Item 27
CP

WPA No. 10555 of 2023

Rabindranath Chatterjee & ors.

Vs.

The State of West Bengal & Ors.

Mr. Tanmay Chowdhury

Ms. Ritoprita Ghosh

... for the Petitioners.

Mr. Ansar Mondal

Mr. Suprabhat Bhattacharya

...for the State.

Mr. Animesh Das

Sk. Md. Ali

...for the respondent no. 5.

The petitioners allege that the authorities of Sheakhala Gram Panchayat had failed and neglected to take steps on the basis of the application filed by the petitioners, inter alia, praying for permission to construct a drain through L.R. Plot Nos. 978 and 979 of Mouza – Sheakhala. According to the petitioners, they reside in the said premises with their family members but due to inadequate drainage system, foul water from the premises is not being discharged into the main drainage system of the panchayat authorities which was adjacent to the panchayat road.

The petitioners pray for an order directing the panchayat authorities to intervene in the matter and

permit the petitioners to construct a drain through the said plot in question.

Learned advocate for the respondent no. 5 submits that a civil suit is pending in respect of the property in question and there is an order of status quo.

The petitioners filed a suit for declaration and injunction in respect of the land, with the allegation that the respondent nos. 5 to 7 had disturbed their right, title, possession and enjoyment in respect of the property in question. The learned advocate further submits that the order of injunction passed in Title Suit No. 3235 of 2014 would indicate that the petitioners tried to construct a drain over the area occupied by the said respondents. Hence, the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure was allowed on contest, thereby directing the parties to maintain status quo with regard to the nature, character and possession of the property in question.

The fact that the petitioners are in possession of the property, is not in dispute. The said fact was also admitted by the respondent No.5.

Under such circumstances, in view of the order passed by the learned civil court, it would not be proper for this court to direct the panchayat authorities to permit the petitioner to construct a

drain over the suit property in respect of which an order of status quo is subsisting.

The learned civil court found that the petitioners are in possession of the property in question. The said court would be the appropriate forum to decide whether a drain would be required to be constructed for comfortable living of the petitioners, during the pendency of the suit. Specially, the area over which such drain may be constructed, must also be a matter for determination by the civil court as the plot in question is the subject matter of a civil suit.

Thus, the petitioners are at liberty to approach the learned civil court for a direction to permit temporary construction of a drain upon variation, vacation and/or modification of the order passed on February 18, 2015. The said application of the petitioners shall be disposed of in accordance with law, upon hearing the defendants in the suit.

Needless to mention, no equity shall be claimed in respect of such drain, if permitted to be constructed and such construction shall abide by the final result of the suit.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)