

20.07.2023
Item No.10
Court No.6.
S. De

M.A.T. 834 of 2023
With
I.A. No. CAN/1/2023

Pranab Kumar Das.
Vs
The State of West Bengal & Ors.

Mr. Jyoti Prakash Chatterjee,
...for the appellant.
Mr. Gora Chand Samanta,
...for the writ petitioner/respondent no.7.
Mr. Biplab Ranjan Bose,
...for the Bansberia Municipality.

By consent of the parties the appeal and the connected application are taken up together for hearing.

A judgment and order dated April 17, 2023, whereby the writ petition being WPA 5617 of 2023 was disposed of, is assailed in this appeal by the respondent no.7 in the writ petition.

The writ petitioner approached the learned Single Judge with the grievance that the private respondent no.7 in the writ petition (appellant herein) is making fresh unauthorized construction at holding no.151, Shibtala Lane, Khamarpara, Ward No.2 under the Bansberia Municipality. The objection/representation filed by the writ petitioner against such unauthorized construction has not been considered by the Municipality.

The learned Judge disposed of the writ petition by directing the Municipality to pass a reasoned order on the representation of the writ petitioner after giving opportunity of hearing to all the concerned parties including the appellant herein. The learned Judge further directed that in the event the Municipality finds that there is unauthorized construction, the same shall be dealt with in accordance with law. The learned Judge further clarified that the Municipality, while considering the representation, shall not enter into any question of title dispute or encroachment.

Being aggrieved, the respondent no.7 in the writ petition has come up by way of this appeal.

We have heard learned counsel for the parties. We find no infirmity in the order under appeal.

Learned advocate for the appellant says that the appellant herein had filed a civil suit before the Civil Judge (Junior Division), Additional Court, Hooghly being Title Suit No.192 of 2000 (subsequently re-numbered as Title Suit No.40 of 2013}, against amongst others, the writ petitioner herein claiming declaration and injunction. In the said suit the writ petitioner herein filed a counter claim contending that the appellant herein had encroached on the land of the writ petitioner and had made unauthorized construction there. The writ petitioner being one of the defendants in that suit inter alia prayed for an

order for demolition of such illegal construction. The plaintiff's suit was dismissed for default on April 8, 2010. Thereafter the defendants proceeded with their counter claim but the counter claim was also dismissed by the learned Judge by his judgment and order dated June 13, 2022. Learned advocate says that the issue of illegal construction has already been decided by the learned Civil Judge in favour of the present appellant. Hence, that issue is *res judicata* and cannot be re-agitated any further.

We are unable to agree with learned advocate for the appellant. In our understanding and as appears from the records, the issue before the learned Civil Judge was as to whether or not the appellant herein had encroached on the land of the writ petitioner herein and had made construction on the land of the writ petitioner. The issue as to whether or not there is a building plan in respect of the impugned construction or if there is a building plan as to whether or not the construction is in accordance with such plan, was not there before the learned Single Judge.

Hence, there is no question of application of the principles of *res judicata*.

We have already stated that we find no reason to interfere with the order under appeal. The Municipality will only consider as to whether or not

there is a sanctioned plan in respect of the impugned construction of the appellant. If there is no sanctioned plan, the Municipality will take steps in accordance with law. If the Municipality comes to a finding that there is a sanctioned plan but the impugned construction deviates from such plan, appropriate remedial measures will be taken by the Municipality.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondents.

Accordingly, MAT 834 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)