

MAT 1068 of 2023
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IA NO:CAN/1/2023

Dr. Sarfaraj Mollah
Vs.
The State of West Bengal & Ors.

Mr. Sardar Amjad Ali, Sr. Adv.,
Mr. Subir Sabud
... For the Appellant.

Mr. Tapas Kumar Dey,
Mr. Rakesh Roy
... For the Private Respondent.

Affidavit-of-Service filed in Court today be taken on record. From the Affidavit-of-Service, it appears that all parties have been served, but the Uluberia Municipality is not represented.

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

This appeal is directed against a judgment and order dated May 12, 2023, whereby the appellant's writ petition being WPA 28944 of 2022 was disposed of by a learned Single Judge of this Court.

The appellant had approached the learned Single Judge with the grievance that the private respondent has made unauthorized construction encroaching on *sali* land of the government. Neither conversion was obtained by the private respondent, nor building plan could be sanctioned by the concerned Municipality, since the land was public land.

The learned Judge called for a report from the Block Land and Land Reforms Officer, Uluberia-II. Such report dated April 28, 2023 was filed. It

appeared from the report that a field enquiry had been conducted in the presence of the representatives of the Uluberia Municipality, the writ petitioner and the private respondent and others. Such inspection revealed that there was no encroachment on public road. The report that the concerned Municipality had filed also was to the same effect.

The learned Judge, accordingly, held that the allegation of encroachment on public road by the private respondent, remains unsubstantiated. The learned Judge disposed of the writ petition by granting liberty to the writ petitioner to approach the appropriate forum, if any private land of the writ petitioner has been encroached upon by the private respondent.

Being aggrieved, the writ petitioner has come up before us by way of this appeal.

Mr. Ali, learned Senior Advocate, representing the appellant/writ petitioner, says that the learned Judge ought not to have disposed of the writ petition by relying upon the report of the concerned BL&LRO. Certain fact-finding exercise has to be undertaken. Although disputed questions of fact are involved, the Writ Court is not altogether powerless to decide such questions.

Learned advocate for the private respondent says that the allegations made by the appellant/writ petitioner are completely incorrect and baseless. Conversion of the land in question has been obtained by the private respondent. The private respondent has till date not made any construction on the concerned land. Only a boundary wall has been constructed.

Having heard learned counsel for the appearing parties, we are of the view that since disputed questions of fact are involved, it would be appropriate to direct the appellant/writ petitioner to ventilate his grievance before the Municipality, which can undertake a fact-finding exercise more conveniently and efficiently than the Writ Court. We are conscious that the plenary power of the Writ Court extends even to considering disputed questions of fact, if the facts and circumstances of a particular case so warrant. However, generally speaking, the Writ Court refrains from undertaking such an exercise.

Accordingly, we grant liberty to the appellant to make a comprehensive representation touching all his grievances, to the Chairman of the Uluberia Municipality, within two weeks from date, with a copy to the private respondent. If such a representation is made within the time period prescribed, the Chairman of the Municipality or any responsible officer authorized by him, shall take a reasoned decision on such representation, in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order along with a copy of the representation, after affording an opportunity of hearing to both the appellant and the private respondent or their authorized representatives. The decision so taken by the Chairman or the authorized officer shall be communicated to the parties within a week from the date of the decision. If the Chairman/authorized officer finds that any of the parties has committed any illegality, appropriate steps will be taken to remedy the same in accordance with law.

Mr. Ali, learned Senior Advocate, says that till a decision is taken by the Municipality, the private

respondent should be restrained from raising any construction on the disputed land in question. We do not pass any formal order. We only record the statement of learned advocate for the private respondent that no further construction will be made till the representation of the appellant is decided by the Municipality. We make it clear that if the representation is not made within two weeks, the Municipality will not be under any obligation to decide the same and the private respondent will also be at liberty to make any construction that he wishes, after obtaining sanctioned building plan from the Municipality. The time period prescribed for disposal of the representation of the appellant by the Municipality, if such representation is made, is peremptory and has to be strictly adhered to.

The appeal and the application are, accordingly, disposed of.

Affidavits not having been called for, the allegations made in the application for interim order shall be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)