

21st June,
2023
(AK)
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W.P.A 13965 of 2023

Chinmoy Mondal
Vs.
The State of West Bengal and others

Mr. Kaustav Banerjee
Ms. Ria Kundu
...for the petitioner.

Ms. Noella Banerjee
Mr. Tapas Ballav Mandal
...for the State.

Learned counsel for the petitioner argues that the petitioner has filed a civil suit, inter-alia, against the PWD authorities, who own a Nayanjuli land immediately adjacent to the petitioner's property, over which the petitioner purportedly has easement rights.

However, it is candidly submitted that in the suit, an injunction application filed by the petitioner/plaintiff was refused, against which a miscellaneous appeal is pending at present before the appropriate Appellate Court.

In the meantime, the petitioner took out an application under Order XXVI of the Code of Civil Procedure for holding local investigation, which was allowed and a report was filed in connection with the

same which, according to learned counsel for the petitioner, goes in favour of the plaintiff/petitioner.

As such, in view of the pendency of the miscellaneous appeal, it is submitted that, on the premise of such report of the Commissioner, this court may pass a restraint order on the respondent authorities from making any further construction over the disputed Nayanjuli property.

Learned counsel appearing for the respondent authorities controverts such contentions and submits that since the petitioner has failed to obtain an order of injunction before the trial court in connection with the suit, mere pendency of an appeal against the same does not justify passing an order, that too by the writ court, which would operate on a higher footing than that of the Civil Court.

There is substance in the contention of the respondents inasmuch as the petitioner cannot, indirectly, get an order from the writ court, which he could not directly get from the Civil Court in view of the refusal of the petitioner's prayer for injunction.

Even assuming that the Commissioner's report was *prima facie* in favour of the petitioner, that would not give any charter to the writ court to enter into the disputed issue pending in the civil suit.

Such report, at best, could be a persuasive factor before the appellate court and a piece of evidence in the suit, which would be considered on merits at the hearing stage of the suit itself.

Hence, the relief which the petitioner can seek before the miscellaneous appellate authority cannot be pre-judged by the writ court at this stage.

In view of the above observations, WPA 13965 of 2023 is disposed of by granting liberty to the petitioner to approach the appellate court, where the miscellaneous appeal of the petitioner is pending, with the appropriate relief of injunction as sought herein.

It is further clarified that nothing in this order shall unnecessarily influence either the trial court or the appellate court on the merits of the case and/or prejudice the rights and contentions of either of the parties in the pending litigation.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)