

8.
12-09-2023
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 1089 of 2023
+
IA NO:CAN/1/2023
+
CAN/2/2023**

**Bimala Devi Shaw
Vs.
Dankuni Municipality & Ors.**

Mr. Sibaji Kumar Das,
Mr. Debarshi Brahma
... For the Appellant.

Mr. Anujit Mukherjee
... For the Private Respondents.

CAN 1 of 2023 is an application for condonation of delay of 30 days, as per report of the Additional Stamp Reporter, in filing the appeal. Causes shown being sufficient, the delay is condoned.

The application being CAN 1 of 2023 is, thus, allowed.

Re : MAT/1089/2023 & CAN/2/2023

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

The appellant is aggrieved by a judgment and order dated March 31, 2023, whereby her writ petition being WPA 19943 of 2022 was disposed of by a learned Single Judge of this Court.

It appears that in an earlier round of litigation, the appellant had approached a learned Single Judge

of this Court by filing WPA 9052 of 2020, alleging that the private respondents, who are officials of a local club, have encroached on her land and had made construction thereon. Police have taken no steps in spite of complaint being lodged.

On August 26, 2021, when that earlier writ petition came up before the learned Single Judge, the private respondents were not represented. It was submitted on behalf of the State that on enquiry, the police have learnt that the private respondents had made a construction. The police have submitted prosecution under Sections 107/116(c) of the Code of Criminal Procedure. The learned Judge directed the police to ensure presence of the private respondents on the next date.

The writ petition again came up for hearing on March 29, 2022. The learned Single Judge disposed of the writ petition with the following order:-

“ Executive Officer, Dankuni Municipality has filed a report that he could not inspect the premises since no surveyor was available. The report is taken on record.

The petitioner may approach the B.L. & L.R.O., Chanditala for appropriate demarcation of her premises and take appropriate civil remedies against the private respondents. ”

The appellant approached the learned Single Judge in the present round of litigation with the grievance that the private respondents have made unauthorized construction without obtaining sanction from the Municipality. The learned Judge, after hearing the parties, disposed of the writ petition with the following observations and directions:-

" The petitioner submits that the private respondents have forcefully raised construction over the land of the petitioner without a valid sanction plan.

I have heard the submissions made on behalf of the parties.

As it appears that the allegation of the petitioner is regarding encroachment and forceful occupation of the petitioner's land by the private respondent and raising construction thereon, accordingly, the Municipality will not be the appropriate authority to decide the issue.

It will be open for the petitioner to approach the competent court for obtaining relief against forceful encroachment of land. "

Being aggrieved, the writ petitioner has preferred the instant appeal.

Learned advocate for the appellant says that the issue that the appellant agitated by way of the writ petition before the learned Single Judge is unauthorized construction more than encroachment. The Municipality should consider whether the construction raised by the private respondents or which they are occupying has the sanction of law.

Learned advocate for the private respondents says that more than 20 years ago, the land in question along with structures thereon, was gifted by the owner of the land to the club, which has been in occupation of the property since then. The club pays Property Tax. It is a registered society. Further, the club has not encroached on anybody's land.

We are of the view that it will be beyond the competence of the Municipality to decide any question of title or encroachment. However, if the appellant

identifies the structures/buildings, which, according to the appellant, are unauthorized, the Municipality should ascertain whether the same is supported by a sanctioned plan. After all, no construction without a sanctioned building plan should be allowed to stand.

Accordingly, we grant liberty to the appellant to make a comprehensive representation to Dankuni Municipality within a fortnight from date. If such representation is made within the time period indicated, the Municipality shall take a reasoned decision thereon, in accordance with law and applicable rules and regulations, within a period of six weeks from the date of receipt of the representation, after affording opportunity of hearing to both the appellant and private respondents herein. If for that purpose, the competent officer in the Municipality needs to conduct a local inspection, he shall do so in the presence of the appellant or her representative and the private respondents or their authorized representatives and the appellant or her representative may identify the building, which, according to her, is unauthorized. Further consequential action may be taken by the Municipality depending on its final decision.

We make it clear that we have not gone into the merits of the case at all including the question of encroachment. The Municipality shall only decide whether or not the structures in question are unauthorized and shall not go into the question of title or encroachment.

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

Affidavits not having been called for, the allegations in the application for appropriate 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.)