

30.08.2023
Sl. No.6(DL)
srm

C.O. No. 1998 of 2023
Prabir Chandra Chakraborty & Anr.
Versus
Ashok Kumar Chakraborty & Anr.

Mr. Jayanta Das,
Ms. Soumita Ghosh

...for the Petitioners.

Mr. Tanmoy Mukherjee,
Mr. Kunal Ganguly

...for the Opposite Parties.

The revisional application arises out of an order dated June 8, 2023 passed by the learned Civil Judge (Junior Division) at Dubrajpur, Birbhum, in Title Suit No.101 of 2016.

By the order impugned, the learned court below allowed laying of an underground pipeline through the 'Kha' schedule property under a scheme of the Public Health Engineering Department, Government of West Bengal.

The government had implemented door to door supply of drinking water to the households in various villages. The learned court below observed that the laying of the underground pipeline would not amount to violation of the order of *status quo* as no construction would be permitted. The court observed that equity demanded that plaintiffs be entitled to free supply of purified water from the government. Such

order was passed on an application under Section 151 of the Civil Procedure Code.

The defendants have preferred this revisional application alleging that the learned court below could not have varied an order of *status quo* on an application under Section 151 of the Code of Civil Procedure. It has been submitted further that the defence case is that 'Kha' schedule property was not a part of the 'Ka' schedule property and was the exclusive property of the defendants.

The contention of the plaintiffs that the 'Kha' schedule property was a passage, of which both the parties are co-sharers and such passage was being used for egress and ingress to the plaintiffs' house, has been denied.

Mr. Das, learned Advocate appearing on behalf of the petitioners submits that if the underground pipeline is allowed to be laid, in that event the nature and character of the property would be altered and the right of the plaintiffs in respect of the said 'Kha' schedule property would be established. The defence case shall suffer. It is further submitted that the learned court below ought to have directed the plaintiffs to file a proper application under Order XXXIX Rule 4 of the Code of Civil Procedure, as the interim order of *status quo* was altered by the order impugned.

It is further submitted that there is a well in the premises and also a submersible pump. Hence, alternative sources of water are already present in the suit property.

Mr. Mukherjee, learned Advocate appearing on behalf of the plaintiffs/opposite parties submits that the order impugned, by which the petitioners were permitted to lay an underground pipeline for supply of drinking water under a project of the government, would not amount to changing the nature and character of the suit property and would neither amount to violation nor modification of the order of *status quo*. By the order of *status quo*, the parties were restrained from changing the nature and character of the suit property in question, by raising any construction or otherwise. The underground pipeline will be laid below the surface and there will not be a construction over and above the surface. Only the underground water line, through the said passage will be drawn and connected to the plaintiffs' premises.

Reliance has been placed on a decision of this Court in the matter of Sk. Samsud Doha vs. The West Bengal State Electricity Distribution Co. Ltd. & Ors. reported in 2012(3) CLJ (Cal) 153.

In the said case, by referring to another case, i.e., Sk. Asgar vs. State of West Bengal & Ors. reported in 2010(4) CHN (Cal) 191, a learned coordinate Bench observed that an order of

status quo with regard to nature and character of the suit property would not be violated if an electric supply line is drawn over the property.

Similarly, an underground water supply line, under a beneficial scheme of the government, would not change the nature and character of the suit property, which may cause any prejudice to the parties to the litigation.

It is made clear, that no construction on the surface of the passage shall be permitted. The laying of the underground pipeline shall be subject to the final result of the suit. The plaintiffs shall not claim any equity in respect of such water connection, and shall be liable to remove the same if the suit fails. If any digging or excavation of earth is done on the 'kha' schedule for the passage, the 'kha' schedule property shall be restored to its original position. The process will be monitored by the learned Advocate Commissioner.

The learned Advocate-Commissioner, who has already been appointed, shall file a report after such underground pipelines are laid in order to bring it to the notice of the court that the order of the learned court below and the order of this Court, have been complied with.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)