

D/L
Item No. 05
06.09.2023
KOLE

**MAT 1328 of 2023
with
IA No. CAN 1 of 2023**

**Miraj Sk @ Mirajul Arfin
-Vs.-
Saidul Islam & Ors.**

*Mr. T. P. Halder,
Mr. S. N. Sinha Ray,*

...for the appellant.

*Mr. Prosenjit Mukherjee,
Mr. A. Kamal Das,
Ms. P. Dutta,*

.... For the respondent no. 1.

*Mr. Rajarshi Basu,
Mr. P. Goswami,*

...for the State.

Supplementary affidavit filed on behalf of the appellant in Court today be kept with the records.

The appellant, who was the private respondent in the writ petition, challenges a judgment and order dated June 21, 2023 passed by a learned Single Judge of this Court in the writ petition of the respondent no. 1 herein, being WPA 5725 of 2023. The respondent no. 1/writ petitioner approached the learned Single Judge with the grievance that the private respondent in the writ petition (present appellant), had raised residential building on agricultural land without getting such land duly converted. It was also submitted that there was no sanctioned building plan for the construction. Further, it was stated that although the fund under the Pradhan Mantri Abas Yojona (PMAY) was sanctioned for raising construction on plot no. 1616, the

private respondent in the writ petition raised construction on plot no. 1423.

The Learned Single Judge called for a report from the District Magistrate, Birbhum. From such report, the learned Judge noticed the following:-

- (i) Construction was made by the private respondent (present appellant) on agricultural land without obtaining conversion certificate from the concerned authority;
- (ii) Construction was made on plot 1423 although the fund was sanctioned for construction on plot 1616.

The Learned Single Judge accordingly disposed of the writ petition with the following directions:-

“As the construction was made after obtaining fund under the P.M.A.Y., the same ought to have been utilized in accordance with law. As the fund was utilized for raising construction in an illegal manner, the private respondent, who is responsible for making such unauthorized construction, is liable to refund the amount.

The District Magistrate is accordingly directed to take steps through the concerned authority for demolition of the unauthorized construction and recovery of the amount released in favour of the private respondent for the purpose of raising the said construction. Steps shall be taken in the matter at the earliest, positively within a period of 16 weeks from the date of receipt of a copy of this order.”

Being aggrieved, the private respondent in the writ petition has come up by way of this appeal.

We heard this matter at some length on August 30, 2023 and by an order of that date, we had recorded our

prima facie opinion that there is no infirmity in the order under appeal. However, on the specific request of learned Senior Counsel, appearing for the appellant, we had adjourned the matter till today.

Today again we have heard Learned Advocate for the appellant. Learned Advocate for the appellant fairly submits that it is not in dispute that the construction has been made by the appellant on agricultural land. He says that the writ petitioner has also made construction on the adjacent plot which is also agricultural land. However, the land in question is, in fact, not being used as agricultural land.

Relying on a copy of a letter dated August 22, 2022, annexed to the supplementary affidavit, learned Advocate for the appellant submits that it is true that fund under the PMAY Scheme was sanctioned for construction on plot 1616. However, due to domestic disputes, the appellant was unable to construct on the said plot and accordingly made construction on plot no. 1423. This was informed to the Chairman of the Nalhati Municipality by the letter dated August 22, 2022.

We have not called upon the respondents to make submission.

Admittedly, the appellant has made construction on a plot of land which is still recorded as agricultural land in the record of rights. It is not relevant as to whether or not, in fact, the land is used as agricultural land. Any land recorded as agricultural land cannot be constructed upon without changing the classification of such land.

Further, it is also in dispute that although fund was sanctioned by the Government under the PMAY Scheme for construction on plot 1616, in fact, construction has been made on plot 1423. This is also irregular and perhaps illegal.

Noting the aforesaid, the learned Single Judge dismissed the writ petition. We find no infirmity in the order under appeal. The same is a well-reasoned and considered order.

Learned Advocate for the appellant submits that although the learned Single Judge has directed the District Magistrate to demolish the impugned construction, the competent authority to do so is the Nalhati Municipality. We clarify that whoever is the competent authority will carry out the direction of the learned Single Judge.

The appeal and the connected application are, accordingly, dismissed. There will be no order as to costs.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)