

D/L  
Item No. 07  
12.09.2023  
KOLE

**MAT 1330 of 2023  
With  
IA CAN 1 of 2023**

**Sri Shyam Pandit  
-Vs.-  
The State of West Bengal & Ors.**

*Mr. Achyut Basu,  
Mr. R. Chakraborty,  
Mr. Somen Bose,  
Mr. Arirban Saha,  
Ms. P. Basu,  
Mr. S. Chakraborty,  
Ms. Pritha Biswas,*

*...for the appellant.*

*Ms. Sima Adhikari,  
Ms. Kakali Naskar*

*...for the State.*

*Mr. Atanu Biswas,*

*...for the respondent nos. 4 and 5.*

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

A judgment and order dated June 16, 2023, whereby the appellant's writ petition being WPA 16594 of 2022 was dismissed, is under challenge in this appeal at the instance of the writ petitioner.

The writ petitioner approached the learned Single Judge with the grievance that the private respondent had made unauthorized construction encroaching on not only Municipal land but also land of the writ petitioner.

Learned Judge called for a report from the Kalna Municipality which was duly filed by the Chairman of the Municipality. It appeared from the report that a spot

enquiry had been conducted and during inspection it was found that there was no encroachment on Municipal road by the private respondent. Nor was any unauthorized construction found causing any obstruction to the ingress and egress to and from the writ petitioner's property.

The Learned Judge, on the basis of records before her, came to the conclusion that there is no merit in the submission of the writ petitioner that there has been unauthorized construction on the part of the private respondent. The learned Judge dismissed the writ petition by granting liberty to the writ petitioner to approach the appropriate forum for adjudication of any private dispute between the private parties.

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

We have heard Mr. Basu, learned Advocate, representing the appellant/writ petitioner as also learned Advocate for the Municipality. We find that factual disputes are involved in the case pertaining to encroachment and title. The same cannot be decided conveniently or effectively by the writ court. We see no infirmity in the approach or conclusion of the learned Single Judge to refuse to interfere and reserve liberty to the writ petitioner to approach the competent forum.

We find no reason to entertain this appeal. We just clarify that if the appellant/writ petitioner approaches the competent forum, that forum will decide the appellant's suit/application in accordance with law, without being

influenced by any observation in this order or in the order of the learned Single Judge which is challenged before us.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents.

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

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.)**