

25.07.2023
Item No.02
Court No.6.
S. De

M.A.T. 1336 of 2023
With
I.A. No. CAN/1/2023
I.A. No. CAN/2/2023

Srijan Realty Private Limited & Ors.
Vs
Gayetri Devi & Ors.

Mr. Siddhartha Banerjee,
Mr. Rahul Karmakar,
Mr. A.B. Das,
Mrs. Srijani Chongdar,
Mr. Saumajit Majumdar,
...for the appellants.
Mr. Jayanta Mahanty,
...for the Maheshtala Municipality.
Mr. Pratip Kumar Chatterjee,
...for the writ petitioner/respondent no.1.
Mr. S. Bandopadhyay (Jr. Standing Counsel),
Mr. Arka Kumar Nag,
...for the State.

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

An order dated July 7, 2023, interim in nature, in the sense that the writ petition is still pending before the learned Single Judge, is assailed in this appeal. The order was passed in a writ petition being WPA 15733 of 2023 filed by the respondent no.1 herein. The appellants were the respondent nos. 9, 10 and 11 in the writ petition.

The writ petitioner approached the learned Single Judge with the grievance that the private

respondents in the writ petition were making a construction in such a manner that the pathway leading to the residence of the petitioner was being damaged. It was further alleged that water connection and electricity line have also been damaged.

The private respondents denied the allegations made by the writ petitioner. It was submitted on their behalf that the writ petition has been filed merely to harass the private respondents since those respondents refused to pay money to the writ petitioner as demanded by her. It was submitted that the construction work was progressing strictly in accordance with the sanctioned plan. It was further submitted that the writ petitioner tried to encroach upon the land of the private respondents but being unsuccessful, has filed the present writ petition.

The learned Judge directed Maheshtala Municipality to conduct a spot inspection to ascertain and verify the allegations made by the petitioner regarding damaging the pathway and disruption of water and electricity connections to the writ petitioner's premises. Spot inspection was directed to be conducted by July 21, 2023 upon prior notice. The matter has been made returnable before the learned Single Judge on July 27, 2023.

Being aggrieved by the order directing spot inspection, the private respondents in the writ petition have come up before us by way of this appeal.

Mr. Banerjee, learned advocate for the appellants says that misstatements galore have been made in the writ petition, verging on playing fraud on Court. There is in fact no pathway which belongs to the writ petitioner. The appellants should be allowed to bring all relevant facts on record before any further order is passed by the learned Single Judge. Spot inspection has been held, but let not the report of such spot inspection be given effect to until the parties have been heard by the learned Single Judge upon exchange of affidavits.

Mr. Banerjee further says that the writ petitioner has encroached on the appellants' land.

Learned advocate for the respondent no.1/writ petitioner strongly denies and disputes the submission made on behalf of the appellants.

Having heard learned counsel for the parties, we are of the opinion that the writ petition should be decided upon exchange of affidavits. The spot inspection has already been conducted and hence, there is no question of staying the operation of the impugned order. Even otherwise, we do not think that it is necessary to interfere with the order under appeal.

We have noted that the learned Single Judge has made the writ petition returnable on July 27, 2023. On that date all the parties should appear before the learned Single Judge. Copies of the report of the spot inspection should be made available to learned advocates for all parties by the Maheshtala Municipality.

Let affidavit in opposition to the writ petition be filed by August 10, 2023, reply, if any thereto, be filed by August 21, 2023. The parties would be at liberty to mention the matter before the learned Single Judge upon exchange of affidavits or upon expiry of time granted for filing the affidavits.

We are sure that the learned Judge shall hear the parties upon exchange of affidavits before passing any further order whether on the basis of the inspection report or otherwise.

Since we have not interfered with the order under appeal, the directions in the said order on the private respondents in the writ petition shall remain operative.

We have not entered into the merits of the case. Learned advocate for the appellants say that the writ petition is not maintainable. That point can always be urged since that is a point of law.

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

MAT 1336 of 2023 is disposed of along with the applications being I.A. No. CAN 1 of 2023 and I.A. No. CAN 2 of 2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)