

S/L 43
11.04.2023
Court. No. 12
Suvayan

WPA 16998 of 2014
With
IA No. CAN 1 of 2016 (Old No. CAN 6336 of 2016)
With
IA No. CAN 2 of 2021
(Applications not here)

Gobinda Chandra Rudra
Vs.
The State of West Bengal & Ors.

Mr. Prasanta Kumar Banerjee
Ms. Indrani Nandi

...for the petitioner.

Mr. Achintya Kr. Banerjee
Mr. Indramouli Banerjee

...for the Ranaghat Municipality.

Both the parties are represented by their respective learned Advocates.

The instant writ petition is now taken up for hearing.

Mr. Prasanta Kumar Banerjee, learned Advocate for the writ petitioner at the very outset draws attention of this Court to the contents of the writ petition. It is submitted that since the respondent Nos. 2 to 5, that is, the Ranaghat Municipality and its officials have failed to take any steps for stoppage of illegal construction at the instance of the private respondent No. 6., the petitioner had to approach to this Court with a prayer for issuing a writ of mandamus upon the respondent Nos. 2 to 5/municipality authorities to take immediate steps for stop of work as well as for demolition of the pakka construction on the common passage. It is argued by Mr. Banerjee, that in spite of due representation, no action

has been taken by the respondent/municipality authorities. It is also submitted that in respect of the self-same matter one civil suit has been filed in the Court of learned Civil Judge (Junior Division), 1st Court, Ranaghat, District – Nadia, where an application for injunction under the provisions of Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure has been filed and a temporary injunction was granted by the learned Civil Court.

Per contra, Mr. Achintya Kumar Banerjee, learned Advocate appearing for the respondents/municipal authorities at the very outset draws attention of this Court to the copy of the enquiry report dated 20.06.2014 as submitted by Sub-Assistant Engineer, Ranaghat Municipality, S.A.E., which has been annexed with mark R-1 with the affidavit-in-opposition as filed on behalf of the respondents/municipal authorities. It is submitted by Mr. Achintya Kumar Banerjee, learned Advocate for the respondents/municipal authorities that from the enquiry report it would reveal that question of encroachment of the common passage at the instance of the private respondent No. 6 is found to be not correct in course of inspection by the said Sub-Assistant Engineer and from such enquiry report it reveals further that the respondents/municipal authorities have already sanctioned a building plan (commercial) bearing No. 474/28/1/13 in favour of the private respondent No. 6. It is submitted further that being a writ court this Court

cannot go into the title of the parties in respect of the suit passage and, therefore, it is a fit case for dismissal of the instant writ petition.

On perusal of the entire materials as placed before this Court and after giving due hearing to the learned Advocates for the parties, it appears to this Court that sufficient materials have been placed before this Court on the part of the respondents/municipal authorities that no encroachment took place on any portion of the common passage at the instance of the private respondent No. 6 as alleged by the writ petitioner in its writ petition. As rightly submitted by Mr. Achintya Kumar Banerjee, that this Court being a writ court cannot decide as to whether the said passage is at all common or not and in considered view of this Court the same falls in the domain of territorial competent civil court and the same is to be decided on trial on evidence.

In view of the discussion made herein above, this Court finds no merit at all in the instant petition to allow the prayer of the writ petitioner for issuance of writ of mandamus as prayed for.

Accordingly, the instant writ petition being WPA 16998 of 2014 fails and is dismissed and the interim applications being CAN 1 of 2016 (Old No. CAN 6336 of 2016) and CAN 2 of 2021 are also dismissed.

However, there shall be no order as to costs.

It is, however, made clear that while disposing the instant writ petition this Court has not entered into the

title of either of the petitioner or of the private respondent
No. 6 in respect of the alleged common passage.

(Partha Sarathi Sen, J.)