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02-08-2023
debajyoti
(Ct. no.06)

RVW 157 of 2022
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IA NO:CAN/1/2022
in
FMA/863/2022

Secretary, Shibam Charitable Dharmasala
Vs.
The Chief Executive Officer, Haldia Development
Authority & Ors.

Mr. Sujit Bhattacharya,
Mr. Ushananda Jana,
Mr. Suman Chatterjee
... For the Review Applicant.

Mr. Salil Kumar Maiti,
Ms. Dolon Samanta
... For Respondent Nos.9, 11-14.

Re : RVW/157/2022

This application has been taken out by the appellant in FMA 863 of 2022, for review of the judgment and order dated July 22, 2022, whereby FMA 863 of 2022 was dismissed along with the connected application.

The review applicant/appellant had approached a learned Single Judge of this Court by filing WPA 15974 of 2021, contending that although the Haldia Development Authority (in short 'HDA') had allotted a plot of land to the appellant for being utilized by it for charitable purposes against premium paid by the appellant to HDA, HDA has not handed over vacant possession of the land to the appellant. Encroachers are in occupation of the land in question. HDA is not taking steps to evict the encroachers and put the appellant in physical possession of the land. The appellant's prayer before

the learned Single Judge was for a direction on HDA to make over vacant peaceful possession of the concerned plot to the appellant free from encroachment.

Before the learned Single Judge, it was submitted on behalf of the private respondents that they have filed a suit being Title Suit No.95 of 2008 before the learned Civil Judge, Junior Division, Haldia. The prayer in the said suit includes a declaration of the right, title and interest of the private respondents herein in respect of the concerned plot of land. HDA submitted before the learned Single Judge that until disposal of the Title Suit instituted by the private respondents, it was not in a position to hand over possession of the concerned land to the appellant herein, which was the writ petitioner before the learned Single Judge.

In view of the pendency of the Title Suit, the learned Single Judge disposed of the writ petition with a request to the learned trial Judge in seisin of the Title Suit, to dispose of the suit as expeditiously as the business of the court may permit.

Such order of the learned Single Judge was carried in appeal by the writ petitioner by filing FMA 863 of 2022.

This Bench, after hearing learned advocate for the appellant, dismissed the appeal. However, since the Title Suit has been pending since 2008, this Bench requested the learned trial Court to dispose of

the Title Suit pending before it within one year from the date of a copy of the order being placed before it.

The aforesaid judgment and order of this Bench whereby the appeal was disposed of, is sought to be reviewed by this application.

We have heard learned counsel for the review applicant. Learned advocate has submitted that the learned Civil Judge in seisin of the suit does not have jurisdiction to entertain, try or determine the suit in view of Section 8A of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962, which says as follows:

“ 8A. No civil court shall have jurisdiction to decide or deal with any question which is by or under this Act required to be decided or dealt with under the provisions of this Act. ”

Learned advocate also relies on the observations of the Hon’ble Supreme Court in paragraph 32 of the decision in the case of **Bangalore Development Authority and Ors. Vs. R. Hanumaiah and Ors.**, reported at **AIR 2005 Supreme Court 3631**.

We have carefully considered the submission made by learned advocate for the review applicant. The point of the learned Civil Judge lacking jurisdiction to entertain the suit has to be urged before the learned Judge. We are told that the present review applicant is a party to the suit. It will

be open to the review applicant to urge that point before the learned Civil Judge.

Insofar as the Supreme Court decision is concerned, the paragraph relied upon by learned advocate pertains to the doctrine of promissory estoppel. In a nutshell, it says that it is a doctrine evolved by equity in order to prevent injustice. Where a party by his word or conduct makes a promise to another person in unequivocal and clear terms intending to create legal relations knowing or intending that it would be acted upon by the party to whom the promise is made and it is so acted upon by the other party, the promise would be binding on the party making it. It was further held that the principle of promissory estoppel would be applicable also to the government.

Learned advocate for the review applicant argued that HDA is bound by the principle of promissory estoppel and is duty-bound to hand over vacant peaceful possession of the land in question to the applicant.

We are unable to appreciate as to how the aforesaid decision is relevant to the facts of the present case. HDA has not said that it will not be bound by its promise. The private respondents have instituted a suit impleading HDA and the present review applicant as defendants. In such suit, the plaintiffs, who are the private respondents herein, have claimed declaration of their right, title and interest in respect of the land in question. HDA has justifiably contended that it is unable to make over

possession of the land in question till the Title Suit filed by the present private respondents is decided one way or the other.

Even otherwise, we do not find any error apparent on the face of the order under review. Nor has any material been produced before us, which, at the time of hearing of the appeal, the appellant could not have produced in spite of having exercised due diligence. In our considered opinion, none of the grounds of review contemplated in Order XLVII Rule 1 of the Code of Civil Procedure has been made out by the review applicant.

For the reasons aforesated, this review application fails and is hereby dismissed without any order as to costs.

However, we are given to understand that the Title Suit is still pending. By our order under review dated August 22, 2022, we had requested the learned trial Court to dispose of the Title Suit within a year from the date of a copy of the order passed by us being placed before it. We are not unmindful of the workload under which the learned trial Courts operate. However, since the Title Suit is now pending for about fifteen years, it is of utmost importance that the learned trial Court makes all endeavours to dispose of the suit as soon as possible and definitely, within eight months from the date of communication of this order to the learned trial Judge.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Rai Chattopadhyay, J.)