

20.12.2023
Item No.17.
Court No.6.
AB

**M.A.T. 1417 of 2023
With
I A CAN 1 of 2023**

**Manas Adhikary
Vs
The State of West Bengal & Others**

Mr. Salil Kumar Maiti,
Mr. Dyutiman Banerjee,
Ms. Dolon Samanta ...for the Appellant.

Mr. Vivek Jyoti Basu,
Ms. Anima Das Chakraborty...for the State.

Mr. Pinaki Bhattacharya,
Mr. Debjyoti Maity,
Mr. A. M. Bhattacharya
....for the Respondent No.9, 10.

A judgment and order dated May 3, 2023, whereby the appellant's writ petition being W.P.A. 18563 of 2022 was dismissed by a learned Judge of this Court, is under challenge in this appeal.

The appellant approached the learned Single Judge with two grievances. Firstly, he alleged that the respondent nos.9 and 10 (private respondents) had raised construction under the Pradhan Mantri Awas Yojana (in short "PMAY") without obtaining sanction from Debhog Gram Panchayet. The learned Judge dismissed the complaint by holding that for construction under the PMAY Scheme, one does not require permission from the Competent Authority in terms of Section 23 of the West Bengal Panchayet Act,

1973. This finding of the learned Judge is correct and unexceptionable.

The second contention of the writ petitioner was that the private respondents had raised the impugned construction without maintaining proper boundary space and on an undivided plot of land and by encroaching upon a common passage. This complaint also did not impress the learned Judge, who held that every co-sharer has a right over every inch of the property until such property is partitioned by metes and bounds. Any construction on an undivided property is subject to partition and no person can claim equity. The learned Judge dismissed the writ petition with the following observation:

“The petitioner is at liberty to file a suit for declaration and partition, so that the shares of each of the co-sharers may be demarcated.

Moreover, it appears that there is a suit pending with a prayer for removal of the construction from the alleged common passage.

Thus, no order can be passed in the writ petition. The remedies of the petitioner before the other fora, are kept open.”

Being aggrieved, the writ petitioner is before us by way of this appeal.

We have heard learned Counsel for the parties. We find no apparent infirmity in the order under appeal. The appellant’s civil suit for declaration and consequential reliefs is pending.

However, the appellant says that the construction raised by the private respondents is in deviation from the model plan that is applicable for constructions under the PMAY Scheme. We have not found any such averment in the writ petition. Hence, we cannot grant any relief to the appellant on that score.

However, if the appellant has any such grievance, he will be at liberty to make appropriate representation before the Competent Authority who shall dispose of the same in accordance with law, observing the principles of natural justice.

Since no affidavit has been called for, the allegations in the stay application are deemed not to be admitted by the respondents.

MAT No.1417 of 2023 stands disposed of along with IA CAN 1 of 2023.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)