

06. 19.06.2023  
bd. Ct.15

W.P.A. 17963 of 2015

Gouri Debangshi

-vs-

Suri Municipality & Ors.

Mr. Anindya Lahiri

Mr. Samrat Dey Paul ... for the petitioner.

Mr. P.S. Bhattacharya

Mr. Raju Bhattacharya

Mr. Arunava Maity

Mr. Tanweer J. Mondal ... for the respondent nos.  
5 and 6.

Mr. Animesh Mukherjee ... for the respondent  
nos. 1 to 4.

The writ petitioner complains of illegal constructions at the instance of respondent nos. 5 and 6 during pendency of Title Suit No. 59 of 2013 instituted by the petitioner claiming declaration over the land in question and demolition of constructions made by the private respondents in this writ petition who are the defendants in the suit on declaration being made by the civil court relating to right, title and interest of the petitioner/plaintiff.

It has been submitted on behalf of the petitioner that prayer for injunction was refused by the civil court which prompted the petitioner to file miscellaneous appeal and the same was dismissed but the title suit remains pending. In the same breath notice of this Court has been drawn to pages 25, 26, 27 and 29 of the writ petition wherefrom it appears that concerned authority of

Suri Municipality expressed its stand relating to the constructions made by the aforesaid private respondents which includes a notice dated 11<sup>th</sup> March, 2015 issued by the Vice Chairman, Suri Municipality, Birbhum, wherefrom it further transpires that on violating the municipal building rules and sanctioned plan the aforesaid private respondents have made constructions which prompted the municipality to send notice for demolition of the unauthorised constructions.

However, today on behalf of petitioner prayer has been made for initiation of proceedings under section 218 of the West Bengal Municipal Act, 1993 for adjudicating the nature of construction made by the aforesaid private respondents and to take steps in accordance with law.

Mr. Bhattacharya, learned senior advocate representing the respondent nos. 5 and 6 opposes the prayer of the petitioner on the score of pendency of the civil suit at the instance of the petitioner and the effort of the petitioner to obtain injunction has been turned down by the civil court. It has also been submitted by drawing attention to the prayer made in the plaint that the petitioner being plaintiff in the suit prayed for demolition of the constructions made by the private respondents therefore according to the private respondents at this stage the writ petition is not maintainable.

Suri Municipality is represented by learned advocate who has also taken the point of maintainability of the writ petition.

Having considered the contentions made on behalf of the respective parties it appears that a suit is pending at the instance of the petitioner and it is also fact that petitioner has not been able to obtain injunction in the pending civil proceeding. However, on considering the nature of prayer made in the plaint it does not appear that there should be any bar in permitting the concerned authorities of Suri Municipality to initiate proceedings under section 218 for adjudicating the nature of constructions carried out by the private respondents that too during pendency of the suit. The private respondents ought not to be permitted to make illegal constructions by taking advantage of pendency of the aforesaid suit.

Without prejudice to the rights and contentions of the parties in the pending suit this Court directs the concerned authority of Suri Municipality to initiate proceedings under section 218 of the West Bengal Municipal Act, 1993 within a period of four weeks from the date of communication of this order and bring the same into logical conclusion within 12 weeks thereafter after granting opportunity of hearing to the petitioner and the private respondents. The order to be passed by the Municipality shall be communicated to the parties within one week thereafter.

However, it is made amply clear that this Court has not gone into the issues involved in the pending suit; parties shall be at liberty to take steps

therein. All points are kept open before the civil court in connection with the suit which is pending.

With the aforesaid direction the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

**(Saugata Bhattacharyya, J.)**