

12.09.2023
Item No.2.
Court No.6.
AB

M.A.T. 1763 of 2023
With
I A CAN 1 of 2023

Biman Ganguly & Anr.
Vs
The State of West Bengal & Others

Ms. Reshmi Ghosh,
Ms. Barnali Gantait ...for the Appellants.

Mr. Somnath Ganguly,
Mr. Sukalpa Seal ...for the State.

Mr. Dipankar Dandapath
.....for the Respondent No.6.

Mr. Samiran Mondal,
Mr. Abhinaba Dan
.....for the Bankura Municipality.

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

Affidavit of service filed in Court today be kept with the records.

A judgment and order dated August 28, 2023, whereby the writ petition of the present appellants being WPA 7855 of 2018 was disposed of by a learned Single Judge of this Court, is under challenge in this appeal at the instance of the writ petitioners.

The appellants/writ petitioners are the owners of R. S. Plot No.6669 within Bankura Municipality. The question that arose before the learned Single Judge was whether or not the writ petitioners by raising

boundary wall have caused obstruction on the municipal road, which falls on adjacent R. S. Plot No.6670 and also whether or not the writ petitioners have encroached on municipal road by extending the first floor of their building by cantilever. These allegations were made by the private respondent, who had lodged complaint with the Bankura Municipality.

Alleging inaction on the part of the Municipality, the private respondent had approached a learned Single Judge of this Court by filing WPA 13535 of 2015. That writ petition was disposed of by the learned Judge by a judgment and order dated January 8, 2018, directing Bankura Municipality to look into the matter, hold necessary local inspection and take a decision as regards the allegations made by the private respondent against the writ petitioners. The Municipality was directed to pass a reasoned order after granting opportunity of hearing to all concerned parties.

Pursuant to the order of the learned Single Judge, the Board of Councillors of the Municipality, by Resolution dated March 5, 2018, authorized the Chairman of the Municipality to carry out the exercise that had been directed by the learned Judge. Inspection was duly conducted and as per the finding of the Municipality, the road on R. S. Plot No.6670 was found to be blocked by construction of wall at both ends in front of the building of the writ petitioners. The

order dated May 21, 2018, that was passed by the Municipality, also mentioned encroachment on municipal land by extension of first floor by constructing cantilever.

It appears that challenging the order dated January 8, 2018, the writ petitioners had preferred an appeal being MAT 349 of 2018. However, on June 13, 2018, that appeal was dismissed for non-prosecution.

The learned Single Judge, just to be sure that the order dated May 21, 2018, passed by the Municipality, reflected the correct picture, called for further inspection report from the Municipality and also called for an affidavit from the private respondent. The same were filed before the learned Judge. The learned Judge found that the order dated May 21, 2018, passed by the Municipality, is corroborated by the further inspection report as also by the affidavit filed by the private respondent.

Noting the aforesaid and also noting that the writ petitioners had abandoned their appeal against the order passed by the learned Single Judge on January 8, 2018, in the earlier round of litigation, the learned Single Judge disposed of the writ petition with the following directions:

“In view of aforesaid facts this Court directs the concerned authority of Bankura Municipality to remove obstructions made by the petitioners on the municipal road falls on R. S. Plot No.6670 as well as to demolish the extension of the first floor made by the petitioners using cantilever which is above the said municipal road within a

period of eight weeks from the date of communication of this order.

It will be open to the concerned authority of the municipality to approach the concerned police authorities for extending necessary help in order to complete the demolition work. If the concerned police authorities are approached by the Bankura Municipality for providing necessary assistance in order to facilitate demolition work the police authorities are also directed to provide necessary support and assistance.”

Being aggrieved, the writ petitioners are before us by way of the present appeal.

We have heard learned Counsel for the appellants, the private respondent as also the Municipality. We find that disputed questions of fact are involved in the matter. While the Municipality and the private respondent say that the appellants have encroached on municipal road by extending cantilever and have also blocked the municipal road, the appellants completely deny the same. The appellants rely on certain C. S. Records as also maps. However, the Writ Court cannot conveniently or effectively decide such disputed questions of fact.

The learned Judge passed the impugned order on the basis of records before His Lordship. We do not find any apparent infirmity in the same. We do not interfere. The appeal and the connected application are dismissed.

However, dismissal of this appeal will not prevent the appellants/writ petitioners from approaching the appropriate forum with their

grievance/claim, in accordance with law. If they do approach such forum, their suit/application will be decided by the forum in accordance with law, uninfluenced by anything in this order or in the order of the learned Single Judge, which is impugned before us.

Learned Advocate for the appellants requests us to grant some interim protection permitting the appellants to approach the appropriate forum. We are not inclined to do so. Needless to say, if the Municipality removes the impugned construction before the appellants can obtain interim protection from the appropriate forum and the appellants can demonstrate that such removal is wrongful, they will be entitled to claim damages in accordance with law.

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

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

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)

