

02.01.2023
Item No.5.
Court No.6.
AB

**M.A.T. 1863 of 2022
With
IA CAN 1 of 2022**

**Alok Kumar Poria
Vs
The Secretary, Government of WB,
Department of Panchayet &
Rural Development & Ors**

Mr. Alok Kumar PoriaAppellant (in person).

Mr. Rajarshi Basu,
Mr. K. M. Hossainfor the State.

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

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

This appeal is directed against a judgment and order dated September 27, 2022, whereby the appellant's writ petition being WPA 21004 of 2022 was disposed of by a learned Single Judge.

The appellant/writ petitioner challenged a communication made by the Block Land & Land Reforms Officer, Shyampur-II, Howrah, dated February 19, 2018, to the Block Development Officer, Shyampur-II, Howrah.

It appears that the appellant has filed a suit being Title Suit No.483 of 2017 before the learned Civil Judge (Junior Division), 2nd Court at Uluberia. The

allegation of the appellant in that suit is that the defendants therein including the concerned Panchayet, have encroached upon the appellant's land.

It appears that during the pendency of the suit, the aforesaid communication was made by the Block Land & Land Reforms Officer to the Block Development Officer to the effect that on spot enquiry it has been found that there is no encroachment on the appellant's land. The appellant is aggrieved by such observation since he says that his pending title suit will be prejudiced thereby. Accordingly, the appellant challenged such communication before the learned Single Judge.

The learned Single Judge disposed of the writ petition with the following observations:

“The communication which has been challenged before this Court is an inter departmental communication. Admittedly, two proceedings were pending on the same issue of encroachment, at the relevant time. The State of West Bengal is a party to the suit. Thus, if the State of West Bengal through its officials caused an enquiry in order to ascertain the actual position, so that it may defend the suit property, there is no reason as to why such spot enquiry could not have been made.

It does not appear that this enquiry has been used against the petitioner. It also appears from the record that the spot enquiry may have been made as the writ petition had been pending before this Court. At best, it may be used in the written statement and as an evidence by the state. The same shall be subject to proof and the petitioner shall get ample opportunity to controvert the same or ask for commission in the pending suit. The issues framed in the civil suit, shall be decided on evidence and available records.”

Being aggrieved, the writ petitioner has come up by way of this appeal.

We have heard the appellant/writ petitioner in person. We have also heard learned Counsel for the State.

We are of the view that since the appellant's title suit is pending before a competent Court, all questions should be decided by that Court. Questions of encroachment cannot be decided by the Writ Court. Such an issue can only be adjudicated upon by a Civil Court. The appellant will be at liberty to dispute the observation made in the impugned communication to the effect that there is no encroachment on his land, before the Civil Court in the pending suit.

We make it clear that such observation will not be effective until the learned Judge hearing the title suit considers the same and records his/her observation regarding the same. The appellant will also be at liberty to pray for appointment of survey commissioner. We are told that such prayer is pending before the learned Civil Court. Any inter departmental communication on the basis of an exercise of spot enquiry carried out in the absence of the appellant cannot prejudice the appellant. The appellant must be given sufficient opportunity to deal with such observation. Ultimately, as the learned Single Judge has observed, the defendants, if they wish to rely on

such observation, will have to prove the same by adducing proper evidence.

Hence, we do not see any reason to interfere with the order under appeal.

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

M.A.T. No.1863 of 2022 is, accordingly, disposed of along with IA CAN 1 of 2022.

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

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)