

28.11.2023
Item No.5.
Court No.6.
AB

**M.A.T. 2296 of 2023
With
I A CAN 1 of 2023**

**Sk. Kamaluddin @ Palash & Others
Vs
Ranima Parvin & Others**

Mr. Debasis Kar,
Mr. Arka Tilak Bhadra ...for the Appellants.

Mr. Ansar Mondal,
Mr. Ashish Dutta ...for the State.

Mr. Sankar Paul,
Mr. Sujan Das,
Ms. Tapati Sarkarfor the Respondent No.1/
Writ Petitioner.

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

The respondent nos.7 to 15, in the writ petition, have come up by way of this appeal assailing an order dated November 23, 2023, passed by a learned Single Judge of this Court in WPA No.7317 of 2023, being a writ petition filed by the respondent no.1 in this appeal.

The writ petitioner had approached the learned Single Judge complaining that the respondent nos.7 to 15, in the writ petition, had encroached on the land of the writ petitioner and had raised illegal construction thereon. To be precise, the allegation was that the said

respondents had constructed a club room and boundary wall on the land in question.

The Municipality was not represented before the learned Judge.

Learned Advocate for the respondent nos.7 to 15 in the writ petition submitted that on the next date of hearing, he will come up with documents to show and satisfy the Court that the said respondents have right, title and interest in respect of the land on which the club room has been constructed.

The learned Judge passed the following direction:

“Today the said respondents have not been able to show any document in support of their right, title and interest over the plot of land.

I direct the Khardah Municipality to demolish the club room and to file a report forthwith on 28th November, 2023 at 1 p.m. that the club room has been demolished.

This order is to be communicated by the petitioner forthwith to the Rahara Police Station and the Khardah Municipality.

With the above observation and direction, the writ application is allowed.”

Being aggrieved, the respondent nos.7 to 15 in the writ petition have filed this appeal.

We are unable to sustain the order under appeal. Firstly, the appellants’ learned Advocate had sought time to produce relevant documents to establish their rights in respect of the land in question. Without granting such time, it was not proper for the learned Judge to direct demolition of the impugned construction. Secondly, question of title cannot be

decided by the Writ Court. The Civil Court is the appropriate forum. The learned Judge directed demolition on the ground that on that particular date, the concerned respondents could not show any document in support of their right, title and interest in respect of the concerned plot of land. This, according to us, was not proper. Thirdly, whether or not the construction in question is unauthorized, is for the Municipality or the Civil Court to decide. Without even ascertaining as to whether or not the impugned construction is illegal, it may not have been proper to direct demolition thereof.

For the reasons aforestated, this appeal is allowed. The order under appeal is set aside. Consequently, the connected application stands disposed of.

This will not prevent the respondent no.1/writ petitioner from approaching the appropriate authority/forum with her grievance that the appellants herein have made unauthorized construction by encroaching upon the land belonging to her. If the appropriate Authority or the competent forum including a Civil Forum is so approached by the writ petitioner, the said Authority or Forum, as the case may be, shall decide the writ petitioner's grievance in accordance with law, without being influenced by any observation in this order or in the order of the learned Single Judge, which is under appeal.

At this stage, we are told that a representation dated 9.3.2023 made by the writ petitioner is pending before the Khardah Municipality. The Municipality is not represented even today in spite of having received notice of this appeal as would appear from the affidavit of service filed in Court today.

The Municipality is directed to dispose of the writ petitioner's said representation in accordance with law and the applicable Rules and Regulations, by passing a reasoned order, within a period of eight weeks from the date of receipt of a copy of this order along with a copy of the representation, after granting an opportunity of hearing to the writ petitioner and the present appellants and/or their authorized representatives. If the Municipality finds that unauthorized construction has been raised by the present appellants, the Municipality will take immediate steps for demolishing the same in accordance with law.

In view of this order, there will not be any further requirement for the Municipality to file any compliance report before the learned Single Judge. The writ petition is treated as on day's list and is disposed of.

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.)

(Partha Sarathi Sen, J.)