

29-08-2023
Court No.2
Sh/15.

**In The High Court At Calcutta
Jalpaiguri Circuit Bench**

W.PA. 1910 of 2023

Ishwar Singh Dhull & Ors.

-Vs-

Siliguri Municipal Corporation & Ors..

Mr. Nabankur Paul,

Mr. Abhishek Sarkar.

..For the Petitioners.

Mr. Ayush Mitruka,

Mr. Suresh Kr. Mitruka.

..For the Respondent No.5 & 6.

Mr. Deborshi Dhar.

For the Municipal Corpn.

The petitioners filed this writ petition with the following payers:-

" a) A writ and/or order or orders and/or direction or directions in the nature of Mandamus directing the respondents and each of them to demolish the unauthorized permanent structure raised by the private respondents by way of converting the open parking space into a commercial godown, in accordance with Section 287 of the West Bengal Municipal Corporation Act, 2006 forthwith;

b) A writ and/or order or orders and/or direction or directions in the nature of Mandamus directing the respondents and each of them to cause an inspection of the unauthorized construction raised by the private respondents by way of converting the open parking space into a commercial godown made by the private respondents and produce such inspection report

before this Hon'ble High Court and if there is any unauthorized construction the municipal respondents to demolish the unauthorized construction in accordance with Section 287 of the West Bengal Municipal Corporation Act, 2006;

c) A writ and/or order or orders and/or direction and/or directions in the nature of certiorari commanding the respondents and each of them to transmit and certify the records of the case so that conscionable justice may be done by quashing the proceedings, order or orders, record or records, document or documents, if any, which stands in the way of demolition of the unauthorized construction erected by the private respondents;

d) Rule NISI in terms of the prayers a, b & c as above.

e) An order of injunction restraining the respondent no.8 from further erecting the unauthorized construction till disposal of the instant petition;

f) Ad-interim in terms of prayer (e);

g) Costs and incidentals to this petition;

h) Such other order or further order or orders as to Your Lordships may deem fit and proper."

The petitioners have also filed a civil suit being Title Suit No.112 of 2019 before the learned Civil Judge, Junior Division at Siliguri with the following prayers:-

i) A decree for khas, actual and physical possession of schedule "A" property to and

in favour of the plaintiff nos.1 and 2 and schedule "B" property to and in favour of the plaintiff nos. 3 & 4 and schedule "C" property to and in favour of the plaintiff no.5 by directing the defendant no.3 to deliver up the possession of the suit property illegally occupied by him, after removing the unauthorized constructions standing thereon;

- ii) Decree for perpetual injunction restraining the defendants their men and agent from changing the nature, character and possession of the suit property;*
- iii) A decree of declaration that the defendant nos.1 to 3 have no right, title and interest in the below schedule property;*
- iv) A decree for permanent injunction restraining the defendant nos.1 to 3 and their associates from transferring the below schedule property;*
- v) Costs of the suit;*
- vi) Any other relief or reliefs;"*

The grievance canvassed in the writ petition is principally against the respondent no.3 in this writ petition, who is also the 4th defendant in the said civil suit. On a harmonious reading of the reliefs claimed in the writ petition and the Civil Suit, it appears to this Court that, the Civil suit which was filed in earlier point of time is more comprehensive and to claim a decree in terms of the reliefs mentioned therein the plaintiff needs to prove that the alleged constructions are unauthorized at the suit premises. The reliefs if granted in this writ petition would prejudice the issue

in the civil suit. This is not permissible in law. The civil suit in its present form is much more comprehensive with prayer for delivery of possession.

In view of the above, in exercising the equity jurisdiction while trying the writ petition, in the facts and circumstances of this case, this Court is of the view that, no order can be passed in this writ petition.

It is made clear this Court has not gone into the merits of the claim of the petitioners in this writ petition in any manner and the petitioners shall be at liberty to urge whatever points they wish to urge before the jurisdictional civil Court where the civil suit is pending within the scope and ambit of the civil suit and the jurisdictional civil Court while trying the said civil suit shall not be influenced by any observations made by this Court herein.

Learned civil Court shall decide the civil suit independently on its own merit.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

With the above observations this writ petition being **WPA 1910 of 2023** stands disposed of without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(ANIRUDDHA ROY, J.)