

October 10, 2023
ARDR (21)

WPA 2440 of 2023

Dhananjoy @ Dhananjay Amin
Vs.
Dhupguri Municipality & Ors.

Adv. Satyam Sarkar,
Adv. Haider Ali,

...for the petitioner.

Affidavit of service filed by the petitioner is taken on record.

In spite of service, none appeared on behalf of the respondents.

The writ petitioner has filed this writ petitioner contending therein that the petitioner is the owner of a piece of land measuring an area of 4 decimal appertaining to R.S. Plot no. 1421 corresponding to L.R. plot no. 2016 in J.L. no. 222 comprised in R.S. Khatian no. 45 corresponding to L.R. Khatian no. 294/1 of Pargana Moraghat Mouza Dhupguri under P.S. Dhupguri, District Jalpaiguri by virtue of a deed of sale bearing no. 2302 dated 15/12/2000 executed and registered by Nivarani Sarkar, the private respondent no.4 herein before the Sub-Register, Dhupguri, Jalpaiguri and recorded the same in Book-I, Volume No.25, page Nos 01 to 04. Despite of transfer of the said land, the private respondent no.4 having no right, title and interest tried to forcibly enter and dispossess the petitioner from the land in question. For that reason the

petitioner had filed a Title suit praying for declaration of title and consequential reliefs before the learned Civil Judge (Junior Division), 2nd Court at Jalpaiguri being Title Suit no. 111 of 2014.

In the said title suit an order of temporary injunction was passed on 04.09.2015 by the learned trial Court on contest restraining the defendant from disturbing or attempting to disturb in peaceful possession of the plaintiff in respect of the suit property till disposal of the suit.

It is submitted by the learned advocate appearing on behalf of the petitioner that in spite of existence of such temporary injunction, the respondent no.4 herein tried to dispossess and disturb the peaceful possession of the petitioner on various manner as such Petitioner had filed an application praying for implementation of the said temporary injunction under Section 151 of the Code of Civil Procedure, 1908. The said application was also disposed of on 27.01.2017 by the learned trial Court directing the I/C, Dhupguri Police Station to ensure that the order passed by the learned trial Court on 04/9/2015 shall not be violated by the defendant or any person on her behalf, but no action has been taken by the police authority, rather, the respondent no.4 started illegally construction in a portion of the suit land with the financial assistance of Dhupguri Municipality.

It is further submits that the writ petitioner immediately made a representation dated 12/07/2023 before the Chairman as well as the Board of Councillors, Dhupguri Municipality, District Jalpaiguri, but representations have not been considered by the concerned Municipality as yet.

Learned counsel for the petitioner further submits that a direction may be given to the concerned respondents to stop the illegal construction made by the private respondent no.4 herein and to stop assistance of the municipality and to demolish the illegal construction.

Having heard the learned counsel for the petitioner and on perusal of the record, it appears none of the respondents appeared despite of good service. Accordingly, justice would be sub-served if the respondent no. 2 herein, being the Chairman, having his office at Dhupguri Municipality, District Jalpaiguri is directed to consider and dispose of the aforesaid representation dated 12.07.2023, which has been appended with the writ petition as annexure P-5, within eight weeks from the date of communication of this order upon affording reasonable opportunity being heard to all concerned including the petitioner and the private respondent no.4 herein, in accordance with law and pass a reasoned order to that effect and communicate the same to the parties within a week thereafter. Liberty is given to the parties to place their case along with the

documents before the Respondent No.2 herein at the time of hearing.

The respondent No.2 is also directed to issue a notice intimating the date and time of hearing to the parties well in advance.

With the aforesaid observations and directions, the writ petition is disposed of.

There shall be, however, no order as to costs.

Since no affidavit exchanged between the parties the allegations contained in the writ petition are deemed not to have been admitted by the respondents.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Ajay Kumar Gupta, J.)