

04. 22.03.2024
Court No.6
(Tanmoy)

FMA/199/2024

**SAMBIT SINHA AND ORS.
VS
THE STATE OF WEST BENGAL AND ORS.**

**WITH
IA NO: CAN/1/2024**

Mr. Partha Pratim Roy, Adv.,
Mr. Dyutiman Banerjee, Adv.

...for the appellants/
writ petitioners.

Ms. Mitali Mukherjee, Adv.,
Ms. Kakali Naskar, Adv.

...for the State.

Mr. Uttiya Ray, Adv.,
Mr. Arnab Mandal, Adv.

...for the respondent nos. 2-5.

Mr. Pawan Kumar Gupta, Adv.,
Ms. Sofia Nesar, Adv.,
Mr. Santanu Sett, Adv.

...for the respondent no.6.

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

A judgment and order dated October 4, 2023, whereby the writ petition of the appellants herein being WPA 11045 of 2023, was dismissed by a learned Judge of this Court, is the subject-matter of challenge in this appeal.

The appellants approached the learned Single Judge with the grievance that the private respondent in the writ petition who is also the private respondent in this appeal, has made unauthorized construction on the concerned plot of land. The writ petitioners submitted that they had made representations dated December 4,

2022 and April 16, 2023 to the local Councillor and the Chairman of Bolpur Municipality, respectively, but no action has been taken by the Authorities on the basis of such representations.

It was submitted on behalf of the private respondent that various disputed questions of fact are involved. The writ petitioners have filed two civil suits before the appropriate Court. Pendency of such suits has not been mentioned in the writ petition. This is gross suppression of material facts. The private respondent prayed for dismissal of the writ petition.

The learned Judge accepted the submission of the private respondent and dismissed the writ petition. Hence this appeal at the instance of the writ petitioners.

We have heard learned Counsel for the parties.

Learned Advocate for the appellants says that although inadvertently, the factum of pendency of the two civil suits has not been mentioned in the body of the writ petition, the same is clearly mentioned in the representation dated December 4, 2022, made by them to the concerned Councillor of Bolpur Municipality. Such representation is an annexure to the writ petition. Hence there was no suppression of material facts.

Learned Advocate for the private respondent says that the land in question, on which, according to the appellants, unauthorized construction has been made by the private respondent, has been taken on long lease

by the private respondent from its owners. At the time of grant of lease, the impugned construction was already there. The private respondent did not raise any construction. In fact, it were the appellants who made such construction. This is, however, disputed by learned Advocate for the appellants.

Be that as it may, we are not, nor can we be, concerned with any title dispute. The Municipality can also not be concerned with any title dispute. The only duty and function of the Municipality is to see if any unauthorized construction has been made within its territorial limits and if so, then to take appropriate action in respect thereof.

In the present case, we find that two representations have been made by the appellants to the concerned Councillor of Bolpur Municipality and to the Chairman of Bolpur Municipality respectively. We are of the view that ends of justice will be served if the Board of Councillors of Bolpur Municipality disposes of such representations in accordance with law.

Accordingly, we direct the respondent no.4 herein, i.e. the Board of Councillors of Bolpur Municipality, to take a reasoned decision on the representations made by the appellants, dated December 4, 2022 and April 16, 2023, in accordance with law and the applicable rules and regulations, within a period of eight weeks from the date of communication of this order by the appellants to

the Board of Councillors along with copies of the said two representations, after affording opportunity of hearing to the appellants, the private respondent and any other concerned party or their authorized representatives. Further action may be taken by the Municipality depending on the order that is passed by the Board of Councillors. The parties will be at liberty to place all relevant documents before the Board of Councillors at the time of hearing. We clarify that the Board of Councillors shall not enter into any title dispute between the parties.

We have not gone into the merits of the disputes between the parties. The Board of Councillors shall take an independent informed decision in that regard.

Mr. Ray, learned Advocate appearing for the Municipality, says that in the past, the Municipality has found it difficult to effect service on the parties. In particular, the building which is said to be unauthorized, is under lock and key. Although the private respondent claims to be residing in such building, service could not be effected on him at that address since the building is under lock and key.

We clarify that if the Municipality finds it difficult to effect service on any of the parties, it will suffice if it effects service on learned Advocate-on-Record of that party who is appearing before us.

The order impugned in this appeal is set aside.

The appeal being FMA 199 of 2024 and the connected application being IA No: CAN/1/2024 are accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Supratim Bhattacharya, J.)