

D/L
Item No. 10
11.03.2024
KOLE

**FMA 262 of 2024
With
IA CAN 1 of 2024**

**Runa Roy & Ors.
-Vs.-
The State of West Bengal & Ors.**

*Mr. Mrinal Kanti Ghosh,
Mr. Murli Nath Mukherjee,*

...for the appellants.

Affidavit of service filed in Court today, be kept with the records. In spite of service, nobody appears for the respondents.

A judgment and order dated December 4, 2023, whereby the writ petition of the appellants being WPA 12556 of 2023, was disposed of by a learned Judge of this Court, is the subject matter of challenge in this appeal.

The appellants/writ petitioners approached the learned Single Judge alleging unauthorized construction at the instance of the private respondents on the land of the appellants. The matter was referred to the concerned Sub-divisional Officer (in short 'the SDO') who passed a reasoned order dated March 30, 2023. Considering the fact that the construction was made under the PMAY (G) Scheme, and the same is exempted from permission to be obtained under proviso to Rule 19 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004, as amended in 2006, the SDO opined that the construction in question is

not illegal or unauthorized. The SDO did not decide the question of title to the property.

Learned Advocate representing the private respondents submitted before the learned Judge that his clients are in occupation of the subject plot of land for more than two decades. A suit has been filed before the concerned Civil Court claiming adverse possession. The suit is pending disposal.

It was submitted on behalf of the State that the SDO has passed a reasoned order after hearing all the parties. There was no scope for interfering with the same.

The learned Judge disposed of the writ petition with the following observations and directions:-

“Upon hearing the parties it appears that the issue right now to be decided is whether the private party could have raised construction of a plot of land which is yet to be recorded in their name.

Admittedly, as on date the name of the predecessor-in-interest of the petitioners is recorded in the record of right. The suit claiming adverse possession is pending. The SDO rightly refrained from deciding the issue of ownership.

It will be open for the parties to obtain necessary order from the learned civil forum declaring ownership of the property. The construction is question shall abide by the order to be passed by the learned Civil Court.”

Being aggrieved, the writ petitioners are before us by way of this appeal.

Learned Advocate representing the appellants says that admittedly the land on which the private respondents have made construction, belongs to the appellants. The

Record of rights would show that the appellants are the recorded owners of the said land. The question is whether the private respondents could have made construction on the land of the appellants under the PMAY (G) Scheme. The learned Judge recorded that the issue to be decided is whether the private respondents could have raised construction over a plot of land which is yet to be recorded in their names but did not decide such issue.

We are of the view that the order impugned as such needs no interference. However, it may be appropriate to remand the matter to the concerned SDO only for the purpose of considering whether or not the private respondents herein could have made construction on land not belonging to the private respondents, under the PMAY (G) Scheme. It appears that as of date, the recorded owners of the land in question are the appellants. However, the SDO shall not go into any disputed question of title. That issue is pending consideration before the relevant Civil Court. The appellants herein will be at liberty to take steps in that suit as they may be advised.

Accordingly, we direct the respondent no. 3, being the Sub-Divisional Officer (Sadar), Chinsurah, Hooghly, to consider only the issue as to whether or not the private respondents herein could have made construction on land which is not recorded in their names, under the relevant housing scheme. The officer shall grant opportunity of hearing to the appellants as well as the private respondents or their authorized representatives and shall pass a reasoned

order, in accordance with law, within a period of two months from the date of communication of this order by the appellants to the SDO. The officer shall also issue notice to the Pradhan of the concerned Gram Panchayat for production of relevant documents if the same are necessary.

We have not gone into the merits of the case. The SDO shall take an independent decision in accordance with law.

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

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)