

WPLRT 15 of 2024

(Md. Imtiazul Hauque & Anr. Vs. The State of
West Bengal & Ors.)

Mr. Sabyasachi Chatterjee

Mr. Debabrata Mondal

Mr. Kiran Sk.

Ms. Sunanda Chatterjee

Mr. Dinesh Chandra Mondal

..... For the petitioners

Sk. Md. Galib

Ms. Sujata Mukherjee

..... For the State

Mr. Manas Kumar Barman

Ms. Bina Baidya

..... For the respondent no. 4

Affidavit-of-service filed by the petitioner be kept on record.

This writ petition was instituted to assail the order dated 2nd February, 2024 passed in an original application being OA No. 215 of 2024 whereby the learned tribunal refused to pass an interim order of *status quo* as on that date as prayed for by the applicants/petitioners (hereinafter referred to as the petitioners).

The relevant portion of the order impugned in the writ petition is as follows:

“... Ld. Advocate for the private respondent no. 3 as well as Ld. Advocate appearing on behalf of the respondent no. 4 submits that there is a similar case pending before the Hon’ble 3rd Bench on 13.02.2024 vide O.A. no. 4043/23.

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On perusal of all documents it appears to us that the present application has been filed challenging the order of the Thika Controller in the year, 2002. In the meantime the executive authorities alleged to have executed the order of such Thika Controller and a question of maintainability has already been raised by the respondent no.3, which is also supported by Ld. Government Representative appearing for the State. We are not inclined to pass any interim order of status quo today but it should be heard on the points of maintainability on 13.02.2024 and till that date the matter stands adjourned....”

Mr. Chatterjee, learned advocate appearing for the petitioners submits that the property forming the subject matter of this writ petition is a thika property and the petitioners’ father happened to be a *bharatia*. On demise of their father, the petitioners became the *bharatia*. He contends that the petitioners were occupying a room in the thika property but the petitioners have been forcefully ousted from the property. He claims that the private respondent no. 4 is raising construction unlawfully over the thika property and considering this urgency, the learned tribunal should have passed an interim order.

Mr. Galib, learned advocate appearing for the State strenuously contends that the Thika Controller passed

the order in 2022. The petitioners have preferred the original application in 2024 to assail the order of Thika Controller. The petitioners have filed an application under Section 5 of the Limitation Act praying for condonation of delay. Such application for condonation of delay has not been disposed of condoning the delay and the original application has not been admitted as yet. Therefore, there is no original application in the eye of law. According to Mr. Galib, unless and until the delay in filing the original application is condoned and the original application is admitted, no interim order, as prayed for by the petitioners can be passed.

Mr. Barman, learned advocate appearing for the respondent no. 4 vociferously contends that the petitioners initially approached a civil Court by instituting a civil suit and on an application submitted by the respondent no. 4 under Order 7 Rule 11 of the Code of Civil Procedure, the plaint presented by the petitioners before the Court has been rejected. Even the order of rejection of the plaint was challenged in an appeal before the Hon'ble Division Bench of this Court by the petitioners but the said appeal also decided against the petitioners. Subsequent thereto, the petitioners approached the thika controller. Thika controller determined that the petitioners are not the *bharatiya* in respect of the subject property. He contends that the petitioners cannot get any interim order, as prayed for.

In reply, Mr. Chatterjee contends that on the basis of one gift deed, which was illegally executed in favour of the respondent no. 4 without obtaining the proper permission from the competent authority, the respondent no. 4 was nominated as thika tenant. Such nomination cannot be treated as valid nomination since the deed of gift is void. The respondent no. 4 has been raising construction on the thika property and hence, the learned Tribunal should have granted injunction, as prayed for by the petitioners despite the fact that the application for condonation of delay is pending.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, to get an interim order, a person seeking such interim order is to satisfy the Court or Tribunal that he has presented a good arguable case, the balance of convenience and inconvenience is tilted in his favour and unless the interim order as sought for is granted, he should be seriously prejudiced which cannot be compensated in terms of money. The person seeking injunction is to satisfy that there is a possibility of his being entitled to the relief asked for by him and the Court or Tribunal may consider that the comparative mischief which is likely to issue from withholding the injunction will be greater than that which is like to arise from granting it.

In addition thereto, the Court or Tribunal may consider whether the plaint or the application presented by the petitioner may be dismissed on any technical ground or whether the proceeding initiated by such person is maintainable or not.

When the issue of jurisdiction, maintainability etc. are raised, then it is convenient to decide such issues first before dealing with any application filed in connection with the main petition.

From the order impugned in the writ petition, it is explicit that point of maintainability was raised at the first available opportunity. The issues of maintainability was raised on the grounds that another original application is pending on the similar issue and order impugned in the original application had been executed by the executive authorities.

As these issues of maintainability have been raised by the respondent, the Tribunal without granting the interim relief as prayed for by the petitioners, fixed the date for hearing of the application on the points of maintainability. Suffice it to observe that the petitioners admitted that they are not in possession of the subject property.

In the said conspectus, we do not find any error, least to say any patent error of law in the order impugned warranting interference of this Court.

In view thereof, the writ petition, thus, stands dismissed.

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

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)