

02.01.2024
Item No.14.
Court No.6.
AB

M.A.T. 354 of 2023

Urmila Shaw & Anr.

Vs

The State of West Bengal & Others

Mr. Kamalesh Jha,
Ms. Sraboni Biswas ...for the Appellants.

Mr. Santanu Kr. Mitra,
Ms. Srijani Mukherjee for the State.

Mr. Supriyo Das for the Respondent No.5.

Mr. Arijit Dey for the Municipality.

A judgment and order dated November 28, 2022, whereby the writ petition of the appellants herein being WPA 22242 of 2022 was disposed of by a learned Judge of this Court, is under challenge in this appeal, at the instance of the writ petitioners.

The writ petitioners approached the learned Single Judge with the grievance that the private respondent was unlawfully resisting the attempt of the writ petitioners to construct a boundary wall on their own property.

The learned Judge noted that the private respondent was relying upon a Memo dated December 10, 1999, signed by the Chairman of Baranagar Municipality certifying that the concerned passage, on which the writ petitioners intended to put up a

boundary wall, is a common passage according to Municipal records.

The private respondent also submitted before the learned Judge, on the basis of a communication made in the month of November, 1997, that drinking water pipeline is laid under the concerned passage. It was also contended that part of the old narrow pathway has been improved by doing some development work by the Municipality. The private respondent also submitted that the concerned passage is the only access to his land.

The learned Judge noted that the writ petitioners had filed a civil suit being T. S. No.25 of 2001 before the learned Civil Judge, Junior Division, 3rd Court, Sealdah against the Calcutta Electric Supply Corporation and the private respondent herein, seeking declaration of ownership in respect of the concerned passage and consequential injunction orders. That suit was, however, dismissed for default on September 12, 2011. It appears that an application has been filed for restoration of the suit.

In the above factual background, the learned Judge disposed of the writ petition with the following observations and directions:

“It appears from the submissions made on behalf of all the parties and upon perusal of the materials on records that, the petitioners are unable to construct the boundary wall and seek help of the Municipality as well as police at the time of making construction.

The private respondent raises an issue with regard to the place where the boundary wall is proposed to be constructed. There is an allegation of encroachment of the municipal land as well as the common passage.

The Municipality or the State respondents including the Block Land and Land Reforms Officer will not be the competent and proper authority to decide the civil rights of the parties.

In an allegation of encroachment, the competent civil Court is the appropriate authority to decide the civil rights of the parties.

In view of the above, the present writ petition is disposed of by observing that it will be open for the parties to approach the appropriate forum for demarcation and adjudication of their private right.”

Being aggrieved, the writ petitioners have come up by way of this appeal.

We have heard learned Counsel for the parties at some length.

Learned Advocate for the appellants argued that even Municipal records would show that the passage in question is a part of the property belonging to the appellants. No question can arise of the passage being a common passage.

Learned Advocate for the private respondent, however, maintains that over 100 years, the concerned passage has been used as a common passage.

We see that there are disputed questions of fact including questions of title, which need to be addressed by a competent Civil Court. The nature of the disputes between the parties hereto is such that the Writ Court is not the appropriate or convenient

forum for adjudication of the disputes. In our considered view, the learned Judge rightly relegated the writ petitioners to a civil forum. In fact, the writ petitioners had approached the civil forum in 2001. In 2011, their suit for declaration and injunction was dismissed for default. We are told that an application for restoration of the suit is pending consideration before the learned Trial Court. As the learned Single Judge has clarified, the writ petitioners/appellants would be at liberty to pursue their remedy before the civil forum, in accordance with law.

We see no apparent infirmity in the judgment and order under appeal. The appeal is, accordingly, disposed of.

Report dated November 30, 2023, filed by Baranagar Municipality in terms of our order dated October 18, 2023, be kept with the records. The report has been circulated amongst learned Advocates for the other parties.

As per the said report, the private respondent has an alternative access to his property apart from the passage in question. We also record the objection by learned Advocate for the private respondent to that portion of the report.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)