

Item No.3
04.03.2024
Court. No. 19
GB

C.O.946 of 2022
With
CAN 1 of 2023

Binoy Krishna Bera
VS
Madhabi Maji & Ors.

Mr. Mahammad Mahmud

...for the Petitioner.

Mr. Anjan Banerjee

...for the Opposite Parties.

In Re: CAN 1 of 2023

1. CAN 1 of 2023 is an application under Section 340 of the Code of Criminal Procedure. The said application has been filed by the plaintiffs in the suit, praying for an enquiry and lodging of a complaint against the defendant/petitioner. It is alleged that the petitioner had forged a document.
2. Reference is made to a communication by the SPIO, Mahanad Gram Panchayat to one Mr. Tanmay Mukherjee, inter alia, stating that no building plan had been sanctioned in favour of Binoy Krishna Bera, son of Late Pranatosh Bera allowing him to raise a construction over the property. The description of the property is quoted hereunder.

“Dist:- Hooghly, P.S. – Polba, Mouza – Sudarshan, J.L. No:-7, L.R. Khatian No:-1085, L.R. Plot no:- 2949, Class – Bastu, Area-54 Satak.”

3. It is submitted that contrary to the aforementioned intimation given by the panchayat, a document has been annexed to the revisional application,

purportedly signed by the Pradhan of the same gram panchayat, which indicates that a sanction had been granted for such construction.

4. The learned advocate submits that the intimation received under the Right to Information Act proves that the document at Page – 41 of the revisional application is a false and fabricated one.
5. The learned advocate for the defendant/petitioner, submits that the plaintiffs had also filed a writ petition before the appropriate forum and an order was passed by the writ court directing the Pradhan to make an enquiry and to arrive at a decision as to whether the construction was unauthorized or not. It is further submitted that several other authorities were approached by the plaintiffs in this regard and upon enquiry, it was found that the erstwhile Pradhan had granted such sanction.
6. In my opinion, these issues are already a part of another order passed by a Hon'ble Writ Court. Separate proceeding before the appropriate authorities have been initiated.
7. Under such circumstances, the correctness of these documents do not fall for consideration in this proceeding, inasmuch as, this proceeding is directed against an order refusing a prayer for modification of the order of injunction and further prayer for allowing the petitioner to complete the construction.
8. Accordingly, CAN 1 of 2023 is rejected.

9. This rejection shall not preclude the plaintiffs from taking appropriate steps in accordance with law, at the appropriate stage, before the appropriate forum.

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10. The order impugned before this Court has been assailed by the petitioner/defendant in the suit, being Title Suit No.112 of 2017, which is pending before the learned Civil Judge (Senior Division), 2nd Court at Hooghly. The challenge is on the ground that the learned court ought to have allowed the petitioner to complete the construction which was being raised in accordance with the sanction plan granted by the Pradhan of Mahanad Gram Panchayat.
11. It appears to the Court that an application for modification and/or variation of the order of injunction under Order 39 Rule 4 of the Code of Civil Procedure read with Section 151 of the Code of Civil Procedure, was rejected by the order impugned. Rejection of an application under Order 39 Rule 4 of the Code of Civil Procedure, is an appealable order.
12. Accordingly, the revisional application is dismissed.
13. The petitioner may approach the appropriate forum in accordance with law. The petitioner is granted liberty to take back the certified copy of the order impugned, upon furnishing a photocopy thereof.
14. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)