

04.01.2024
Item No.10
Court No.6.
S. De

M.A.T. 757 of 2023
With
I.A. No. CAN/1/2023
Shyamal Kumar Dutta.
Vs
Kartick Chandra Dutta & Ors.

Mr. Sabyasachi Mukhopadhyay,
Ms. Koushikee Banerjee,
Ms. Oindri Mukherjee,
Ms. Diya Chowdhury,
Ms. Parna Dutta, ...for the appellant.

Mr. Lalit Mohan Mahato, Ld. A.G.P.
Mr. Rudranil De, ...for the State.

Mr. Pratip Kumar Chatterjee,
...for the writ petitioner/respondent no.1.

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

A judgment and order dated March 13, 2023, whereby the writ petition of the respondent no.1 herein, being WPA 3338 of 2023, was disposed of by a learned Judge of this Court, is under challenge in this appeal at the instance of the private respondent in the writ petition.

In an earlier round of litigation, the respondent no.1 herein had approached a learned Single Judge of this Court with the grievance that the present appellant was making unauthorized construction on his land as also by encroaching on the land of the

respondent no.1 herein. The learned Judge directed the concerned Block Development Officer to conduct due enquiry and file a report, which was duly filed. The report mentioned that *“no building construction permission was given from the end of the Gram Panchayat. There is no building plan in respect of the construction that is being made. The construction which has been made on plot no.5018 is encroaching some additional area adjacent to the plot.”* It may be noted that plot no.5018 is a plot belonging to the present appellant. Plot 5020, which is an adjacent plot, the respondent no.1 herein says that he is the owner of that plot. This is disputed by the appellant who says that plot no.5020 is a trust property and both the appellant and the respondent no.1 are trustees of that trust. Be that as it may, we are not concerned with that presently.

On the basis of the aforesaid report, the learned Single Judge concluded that the construction made by the present appellant is unauthorized. The learned Judge directed the Prodhan of the concerned Gram Panchayat to forward the enquiry report along with other relevant documents to the concerned Sub-Divisional Officer for appropriate steps being taken in accordance with law. The Sub-Divisional Officer was directed to take appropriate steps to deal with the unauthorized construction in accordance with law.

Being aggrieved, the private respondent in that writ petition who is the present appellant, approached the Division Bench by filing MAT 1117 of 2022.

Before the Division Bench, learned advocate for the appellant produced documents which appeared to be a building plan sanctioned in favour of the present appellant. Accordingly, the Division Bench recorded that prima facie there appears to be a sanctioned plan in favour of the appellant. However, the Division Bench was not inclined to go into the merits of the controversy and was of the opinion that a responsible officer in the administration should look into the disputes between the parties.

The Division Bench disposed of the appeal being MAT 1117 of 2022 with the following observations and directions.

“Accordingly, we grant liberty to the respondent no.1/writ petitioner to make a comprehensive representation regarding his grievance to the concerned Block Development Officer within three weeks from date. If such representation is made within the time period indicated above, the Block Development Officer, being the respondent no.8 herein, shall take a reasoned decision thereon in accordance with law and the applicable rules, within a

period of eight weeks from the date of receipt of the representation, after giving an opportunity of hearing to the appellant herein and the writ petitioner and/or their authorized representatives. It is made clear that the parties shall be given full opportunity of filing all documents they wish to reply upon before the respondent no.8. The respondent no.8 shall take a fresh decision without being influenced by his earlier report which was filed before the learned Single Judge. Since the appellant specifically says that there is a sanctioned plan in his favour, the respondent no.8 shall look into the matter. The respondent no.8 shall conduct such enquiry, as he may deem necessary. If required, the respondent no.8 shall be at liberty to seek assistance of the concerned Gram Panchayat which will render such assistance. Needless to say, if the respondent no.8 finds that the appellant has made illegal construction, he will communicate the same to the concerned Sub-Divisional Officer for appropriate action being taken in accordance with law.”

Pursuant to the order of the Division Bench, proceedings were held before the concerned Block Development Officer. He forwarded his findings to the concerned Sub-Divisional Officer. Both the appellant and the respondent no.1 herein participated in the proceedings before the Block Development Officer and the Sub Divisional Officer. Ultimately, by an order dated December 28, 2022, the Sub-Divisional Officer dismissed the case of the respondent no.1 herein with the following observations.

“First : A civil case (information slip no. Misc. appeal no.5/2019 is pending before Learned Civil judge Senior Division Katwa on the Suit property.

Secondly : Both the plot no.5018 and 5020 in Mauza-Kandra are belonging to private owners.

In view of above fact, the undersigned is inclined to hold that this case being Civil in nature is not maintainable at this court.”

Being aggrieved by that order, the respondent no.1 herein approached the learned Single Judge in the present round of litigation.

The learned Judge noted the relevant facts of the case and observed that the writ petitioner was trying to improve upon his original case of alleged

encroachment by the private respondent in the writ petition on the land of the writ petitioner by alleging that the private respondent in the writ petition has made construction in deviation from the plan sanctioned in his favour. The learned Judge disposed of the writ petition with the following observations and directions.

“In the opinion of the Court, the findings of encroachment by the Block Development Officer and the Sub-Divisional Officer can only serve as a supporting evidence in the title suit filed by the petitioner being Title Suit No.44 of 2019. The final decision has to be taken by the civil court. However, the issue as to whether the construction of the respondent no.10 has been made strictly in accordance with the sanctioned plan and in accordance with the rules will have to be decided by the appropriate authorities at appropriate stages under Section 23 of the West Bengal Panchayat Act, 1973. The pleadings and the records do not reveal that any such plea had ever been taken by the petitioner. Admittedly, there is a sanction. The finding of encroachment can be put to use by the petitioner in the

civil proceeding. If the petitioner now alleges that the plan had been deviated from or adequate side spaces had not been maintained and the building rules had been violated, the same give rise to a new cause of action for which the petitioner can always approach the panchayat authorities in accordance with law.

If such representation is filed, the same shall be disposed of in accordance with law upon providing an opportunity of hearing to the parties. The issues to be decided would be whether the construction of the respondent no.10 has been made strictly in accordance with the sanction granted and whether the building rules with regard to maintenance of side spaces had been complied with or not. A reasoned order shall be passed by the authority and steps shall be taken in accordance with law if there are any violations. An inspection shall precede in hearing.”

Being aggrieved, the private respondent in the writ petition has come up by way of this appeal.

Learned advocate for the appellant says that the issue of encroachment is pending adjudication before the competent Civil Court in Title Suit No.44 of 2019 filed by the respondent no.1 herein against the appellant. The appellant has filed a written statement making a counter-claim that the respondent no.1 herein has encroached on the land of the appellant. It is for the Civil Court to decide the issue of encroachment. Finding of the Block Development Officer or the Sub-Divisional Officer on the issue of encroachment cannot be binding on the Civil Court. As regards the issue of alleged deviation from the sanctioned plan, the same can only be considered after the civil suit is decided.

Learned advocate for the respondent no.1 strongly denies and disputes the submission made on behalf of the appellant. He further points out that pursuant to the order of the learned Single Judge impugned in this appeal, the respondent no.1 made a comprehensive representation to the Prodhan of the concerned Gram Panchayat on April 24, 2023. The Prodhan initiated requisite proceedings wherein both the appellant and the respondent no.1 herein participated. The Prodhan came to a finding that the appellant herein has made construction in deviation from the sanctioned plan. The Prodhan has forwarded his findings to the concerned Sub-Divisional Officer by

his letter dated November 21, 2023. A copy of the letter has been handed up to us. Let the same be kept with the records.

Learned advocate for the respondent no.1, therefore, says that this appeal has become infructuous. The order of the learned Single Judge has been carried out.

Learned advocate for the appellant says that he is not aware of the findings of the Prodhan or the letter dated November 21, 2023, written by the Prodhan to the concerned Sub-Divisional Officer. He says that his client has not instructed him on that score.

In the aforesaid factual scenario, firstly, we find that the order of the learned Single Judge has been carried out and, therefore, nothing remains in this appeal. Secondly, even on merit, we see no infirmity in the said order. The learned Judge has rightly held that the issue of encroachment has to be decided by the Civil Court in the pending suit. However, the issue as regards construction having been raised by the appellant herein, in deviation from the sanctioned plan, has to be decided by the concerned Panchayat Authority. In fact, such decision has been arrived at by the Panchayat Authority. It is now for the appellant to challenge such decision of the Panchayat Authority in accordance with law, before the appropriate forum, if he is so advised.

We see no reason to interfere with the order under appeal. We, however, clarify that the finding of encroachment made by the concerned Block Development Officer or the concerned Sub-Divisional Officer will not be binding in any manner on the learned Court which is *in seisin* of Title Suit No.44 of 2019. The learned Court will be at liberty to come to an independent decision in that regard on the basis of the material before the Court, observing the principles of natural justice, without being influenced by any observation either in this order or in the order of the learned Single Judge which is impugned before us.

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

The appeal being MAT 757 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)