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25.06.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 13367 of 2023
With
IA No. C.A.N. 1 of 2024
With
C.A.N. 2 of 2024

Moon Light Residency Private Limited
Vs.
State of West Bengal & Ors.

Mr. Probal Kumar Mukherjee,
Mr. Surendra Dube,
Mr. Debjit Mukherjee,
Mr. Debrup Bhattacharya,
Mr. Meghajit Mukherjee,
Ms. Brinda Sengupta,
Ms. Sweta Mohanty,
Ms. Mobina Ali
...for the petitioner

Mr. Chandi Charan De, Ld. AGP,
Mr. Priyabrata Batabyal
...for the State

Mr. Swapan Banerjee,
Mr. Supratim Dhar
...for the respondent nos. 3 to 5

Mr. Sarvesh Chandra Shrivastava,
Mr. Sk. Siddiki,
Mr. Somnath Chattopadhyay
...for the applicant

The grievance of the petitioner is directed against a work order dated December 28, 2020 issued by the respondent no. 3, i.e. Midnapore Kharagpur Development Authority (MKDA), whereby the respondent no. 6 has been directed to construct a pavement with concrete high drain from Mahubub Nagar towards drainage outlet of NH-06

in Ward No. 04 under Kharagpur Municipality in terms of an agreement dated December 22, 2020.

It is alleged on behalf of the petitioner that by separate deeds of conveyance executed between 2021 and 2022, the petitioner has become the lawful owner of a portion of the premises whereupon the impugned construction activities have been undertaken.

By a letter dated May 30, 2023, the petitioner had complained of an illegal construction on the petitioner's land to the respondent no. 4, being the Chairman of the Midnapore-Kharagpur Development Authority. The said representation is still pending and has not been disposed of.

Upon filing of this writ petition, by an ad interim order dated August 02, 2023, the respondent authorities were restrained from carrying on any construction on the subject premises. Thereafter, there has been inordinate delay on the part of the State respondents to file their affidavits. Ultimately, by an order dated June 14, 2024, this Court had directed the parties to peremptorily complete their pleadings and the writ petition has now been taken up for hearing.

On behalf of the petitioner it is submitted that, a portion of the subject construction is taking place on the land which lawfully belongs to the petitioner. In support of such contention, the petitioner relies

on the conveyance deeds executed between 2020-2021 and submits that there is nothing which the respondents have been able to demonstrate which suggests that any portion of the petitioner's land had been lawfully acquired or taken possession of.

On behalf of the respondent MKDA, it is submitted that the construction of a rigid concrete pavement and drainage at the subject premises is for public interest and for the benefit of the local residents. It is further submitted that the resolution for construction of the subject road was taken at a Board Meeting of the MKDA held on June 15, 2018 and construction is almost complete.

On behalf of the intervenors it is submitted that there is a great deal of public interest involved in construction of the subject road and the same should be completed at the earliest. It is further submitted that this is the only road which connects Mahubub Nagar and NH 06 and is vital for the local residents.

On behalf of the State respondents it is submitted that though the principal grievance in the writ petition is against the MKDA, there is nothing on record to suggest that any portion of the subject premises has been acquired or lawfully belongs to the respondent authorities.

Despite an ad interim order of grave magnitude which has admittedly been subsisting since August 02, 2023 passed by a Co-ordinate Bench, neither of the respondents have taken any steps to expeditiously have this application heard. Significantly, there was no appeal preferred against the order dated August 02, 2023 and all the respondents have permitted the order to continue for more than a year.

On the merits of the case, there is nothing which the State respondents have been able to demonstrate whereby they can show that the subject portion of the land has been acquired or lawfully belongs to the State respondents. Ordinarily, a disputed question of such a nature cannot be decided by a Writ Court. *Prima facie*, the respondent authorities have been unable to trace any ownership right in respect of the subject premises.

It is submitted on behalf of the petitioner that the representation dated 30 May, 2023 ought to be considered by the District Magistrate.

It is an admitted fact that the representation of the petitioner has not been considered nor disposed of since May 30, 2023. All issues raised in the representation including the fact as to whether this is public land which has been used by the local residents for more than twenty-five years or

whether the land belongs to the petitioner would be also considered by the respondent no. 2 being the District Magistrate, District Paschim Medinipur, without being influenced by any observation made in this order.

In view of the fact that a public project has been stalled, the above exercise should be completed within two weeks from the date of communication of this order to the District Magistrate and after hearing all the parties including the intervenors.

The fact that there is an interim order which the petitioner has been enjoying for nearly a year is not to weigh with the District Magistrate in disposing of the representation of the petitioner.

In view of the above, W.P.A. No. 13367 of 2023 along with both the interlocutory applications, being C.A.N. 1 of 2024 and C.A.N. 2 of 2024 stand disposed of.

In view of the fact that the interim order has been continuing in this proceeding since August 02, 2023, the same shall continue for a further period of two weeks only from the date of receipt of this order by the District Magistrate. All the parties are at liberty to communicate this order to the District Magistrate.

There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Ravi Krishan Kapur, J.)